



The State Bar of California

It Needs Additional Revisions to Its Expense Policies
to Ensure That It Uses Funds Prudently

Report 2017-030





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June 27, 2017

2017-030

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by the Business and Professions Code section 6145 (b), the California State Auditor presents this audit report concerning our review of the State Bar of California (State Bar). This report concludes that, although the State Bar has revised its expense policies to help ensure prudent uses of its funds, it still lacks effective controls to verify that its expenses are reasonable and appropriate.

Over the last year, the Legislature has questioned the State Bar's operational structure and the prudence of its expenses. For this audit, we focused on the appropriateness of the State Bar's expenses, including salaries and benefits, travel, catering, lobbying activities, and outside legal counsel, as well as the adequacy of funding for its attorney discipline system. Our review of these six expense categories from 2014 through 2016 determined that all six categories lacked sufficient management controls to ensure that costs were prudent. For example, although salaries and benefits made up 51 percent of its total 2016 expenses, the State Bar has not conducted an in-depth update of its job classifications since 2000 and, because it lacks a compensation policy, the State Bar had not until recently reviewed its compensation against comparable agencies since 2006. In response to a 2016 state law, the State Bar retained an outside consultant to perform an agencywide compensation study, which revealed that 80 percent of the State Bar's full-time employees work a 36.25-hour workweek, it pays base salaries that average 10 percent above the market median for comparable agencies, and it provides more generous health care benefits to its nonrepresented employees than its represented employees.

Further, our review of 90 expenses concluded that improvements are needed to the State Bar's policies and controls. For instance, the State Bar assigns purchasing cards to nearly 38 percent of its employees with monthly credit limits up to \$75,000, but it lacks a process to demonstrate that it assigns these purchasing cards to appropriate staff and it does not document changes to employees' credit limits. Further, although its contracts with two lobbyists comply with legal restrictions related to its funding of lobbying activities, the State Bar does not require its lobbyists to justify the amounts they bill, which totaled \$768,000 from 2014 to 2016. Additionally, while the State Bar has reduced its reliance on outside legal counsel, it uses an informal process to demonstrate the need and selection of outside legal counsel. Finally, state law defines the State Bar's highest priority as protecting the public from attorney misconduct, but its attorney discipline system has historically struggled with complaint backlogs due to a lack of resources and it lacks goals and metrics that would measure the effectiveness of its enforcement efforts.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

The state constitution requires that every person licensed to practice law in California belong to the State Bar of California (State Bar). Supported primarily by member fees from its more than 260,000 members, the State Bar licenses and regulates individuals practicing law in California. State law requires the State Bar to contract with the California State Auditor to audit the State Bar's operations every two years, but it does not specify the topics that the audits should address. Over the past year, the Legislature has questioned the State Bar's operational structure and the prudence of some of its expenses. For this audit, we focused on the appropriateness of the State Bar's expenses, including salaries and benefits, travel, catering, lobbying activities, and outside legal counsel, as well as the adequacy of funding for the State Bar's attorney discipline system.

Although the State Bar has revised its expense policies to help ensure the prudent use of its funds, it still lacks effective controls to verify that its expenses are reasonable and appropriate. We reviewed the six categories of expenses listed above from 2014 through 2016 and found that all six categories lacked sufficient management controls to ensure that costs were prudent. For example, although salaries and benefits made up 51 percent of its total expenses in 2016, the State Bar has not conducted an in-depth update of its job classifications since 2000 and, because it lacks a compensation policy, the State Bar had not until recently reviewed its compensation against comparable agencies since 2006. In response to a 2016 state law requiring it to obtain a compensation and benefit study of those classifications required to conduct disciplinary activities, the State Bar retained an outside consultant—CPS HR Consulting (consultant)—to perform an agencywide total compensation study.

In its April 2017 compensation study, the consultant noted that 80 percent of the State Bar's full-time employees work a 36.25-hour workweek, making the State Bar an outlier among the 40-hour workweeks of comparable agencies. To compare the State Bar's salaries with those of comparable agencies it identified, the consultant converted the State Bar's monthly salaries to a 40-hour workweek equivalent. The consultant found that for the selection of job classifications it reviewed, the State Bar pays base salaries that average 10 percent above the labor market median for comparable agencies—including local governments and the State's Judicial and Executive branches. The State Bar is currently negotiating with its employees represented by an employee union

Audit Highlights . . .

Our review of the State Bar's expenses—salaries and benefits, travel, catering, lobbying activities, outside legal counsel—and funding for its attorney discipline system, revealed the following:

- » *Although the State Bar has revised its expense policies to help ensure the prudent use of its funds, it still lacks effective controls to verify that its expenses are reasonable and appropriate.*
- » *The State Bar has not conducted an in-depth update of its job classifications since 2000 and, until recently, had not reviewed its compensation against comparable agencies since 2006.*
 - *Most full-time employees (80 percent) work a 36.25-hour workweek.*
 - *After adjusting to a 40-hour workweek, it pays base salaries that average 10 percent above the market median for comparable agencies.*
 - *It provides more generous health care benefits to its nonrepresented employees than its represented employees.*
- » *The State Bar lacks a process to demonstrate that it only assigns purchasing cards to appropriate staff and has no process for documenting changes to credit limits.*
- » *It could further decrease its catering costs by aligning its policies with those of the State's Executive Branch.*
- » *Because it does not require the two lobbyists it contracts with to justify the amounts they bill, the State Bar may be paying more than necessary—it paid \$768,000 for lobbying activities from 2014 to 2016.*

continued on next page . . .

- » *Although the State Bar reduced its costs for outside legal services, it has not formalized its process to demonstrate its need for and selection of outside counsel.*
- » *Because of a lack of resources, its attorney discipline system has struggled historically to promptly resolve all the complaints it receives, potentially delaying the timely discipline of attorneys who engage in misconduct.*

(represented employees) to adopt the consultant's salary and classification recommendations. It is also transitioning staff from a 36.25-hour workweek to a 40-hour workweek.

The consultant also identified that the State Bar provides more generous health care benefits to its nonrepresented employees than to its represented employees. The State Bar currently pays 100 percent of the health care premium costs for nonrepresented employees compared to the 80 percent of premium costs it pays for its represented employees. Moreover, the State Bar provides its executive management with lifetime post-retirement medical benefits, which it does not offer to other staff. According to the compensation study, the State Bar's enhanced health care coverage for nonrepresented employees is more generous than the health care coverage at comparable agencies. The State Bar plans to standardize health care benefits for all its employees beginning January 2018, but it will continue to provide lifetime post-retirement medical benefits for executive employees.

Our review of 90 State Bar expenses from 2014 through 2016 concluded that the State Bar could improve its policies and controls over these expenses. For example, although the State Bar assigns purchasing cards to nearly 38 percent of its employees, with monthly credit limits ranging from \$5,000 to \$75,000, it lacks a process to demonstrate that it only assigns purchasing cards to appropriate staff and has no process for documenting changes to credit limits. Specifically, we found eight instances in which the State Bar's records reflected that employees' monthly credit limits ranged from \$5,000 to \$20,000, while the bank showed all their limits being set at \$75,000. With no documentation for these changes, we could not determine whether the increased credit limits were authorized by the State Bar as necessary.

Until late 2016, the State Bar's policies allowed staff to purchase alcohol for events and meetings. In response to scrutiny from the Legislature, the State Bar identified alcohol purchases totaling \$156,900 for events, meetings, and meals between January 2015 and September 2016. Subsequently, the State Bar's board of trustees (board) prohibited all State Bar spending on alcohol as of January 2017. However, the State Bar has not updated its procurement manual to reflect the board's prohibition on alcohol purchases. To demonstrate its commitment to the board's decision, the State Bar should immediately update its procurement manual to prohibit staff from purchasing alcohol for events and meetings.

Although the State Bar also recently imposed limits on its catered meals, it could further decrease its costs by aligning its policies with those of the State's Executive Branch. In November 2016, the State Bar analyzed its catering costs and determined that it could

have saved \$54,000 from January 2015 through September 2016 had it implemented the State's Executive Branch per diem rates. Although the State Bar recently placed a limit of \$55 per person per day on catering costs at its San Francisco office, this is still more generous than the limit of \$41 per day for the State's Executive Branch.

Further, the State Bar should take steps to align the expense practices of its sections with the State Bar's policies. The sections are voluntary organizations of attorneys and associates who share a professional area of interest and offer educational programs to their members in various fields of law. Current legislation proposes separating the sections from the State Bar and turning them into a private, nonprofit entity. Notwithstanding this proposal, the State Bar has indicated that the sections currently must comply with the same policies that State Bar staff follow for travel, the use of purchasing cards, contracting, and business expenses. However, our review of the State Bar's updated policies and procedures revealed that the State Bar allows the sections to provide less justification for booking off-site events than it requires of State Bar staff. The costs for the sections' events are significant: from 2014 through 2016, the sections spent \$4.3 million on catering for these events. Further, we found that the sections frequently paid costs for hotel rooms that exceeded the State Bar's lodging rate in its travel policy. Specifically, among the 15 hotel expenses we reviewed, \$15,800 was for charges that exceeded the State Bar's lodging rate by amounts ranging from \$4 to \$330 per night. Regardless of whether the sections separate from the State Bar, there is a need for controls and limits over expenses to ensure a prudent use of funds.

Just as it should improve and better implement its spending policies, the State Bar should develop stronger policies governing its contracts with lobbyists. Although the State Bar's contracts with two lobbyists comply with legal and statutory restrictions related to its funding of lobbying activities, the State Bar may be paying more than necessary for its lobbyists because it does not require them to justify the amounts they bill, which totaled \$768,000 from 2014 to 2016. The State Bar is renewing its contracts for both lobbying firms. However, the State Bar indicates the new contracts will continue to allow the lobbyists to submit invoices that do not detail their monthly activities. As a result, the State Bar is missing an opportunity to ensure that its spending for lobbying is reasonable and to require that the lobbyists provide an explanation of their activities on the monthly invoices.

Although the State Bar reduced costs related to its contracts with outside legal counsel, it could make its justification for these contracts more transparent. Specifically, the State Bar reduced its costs for hiring outside counsel from \$808,000 in 2014 to \$356,000

in 2016; however, it uses an informal process to demonstrate both its need to hire outside counsel and its process for selecting these law firms. State Bar rules allow it to contract with outside counsel when its members lack the necessary expertise in a particular area of law. In addition, the State Bar is required to use outside counsel when it has a conflict in the matter, such as when current or former employees sue the State Bar. Contracts for legal services are generally exempt from the competitive bidding requirements of the Public Contracting Code. Nevertheless, because of its informal selection process, we were unable to verify whether the State Bar needed its contracts with outside legal counsel, whether the selected firms were the most qualified, or whether the terms of the contracts themselves were reasonable.

Finally, state law defines the State Bar's highest priority as protecting the public from attorney misconduct, but its attorney discipline system has struggled historically to promptly resolve all the complaints it receives, potentially delaying the timely discipline of attorneys who engage in misconduct. Specifically, the State Bar's attorney discipline system has a persistent case backlog—generally defined as cases open for more than 180 days as of December 31 each year. Although the State Bar previously identified a lack of resources in the attorney discipline system as a major reason for this backlog, the State Bar has been unable to obtain the needed resources. In May 2016, the State Bar estimated that it would need an additional 81 staff, at an annual cost of \$9.9 million, for its attorney discipline system to successfully eliminate its case backlog. In September 2016, the State Bar attempted to obtain an additional revenue assessment to bolster its attorney discipline system, but the Supreme Court of California denied this request. The State Bar did budget an increase of 14 positions and \$3.4 million in funding for its attorney discipline system for 2017 from the 2017 special assessment and internal cost savings. However, the attorney discipline system's staffing and funding levels still fall short of its estimated need. Although the State Bar tracks certain workload data, including the number of complaints received, number of cases closed, and size of its backlog, it lacks goals and metrics that would measure whether the attorney discipline system is achieving its broader mission to protect the public from attorney misconduct.

Selected Recommendations

To better align its compensation practices with those of comparable agencies, the State Bar should continue its efforts to update and formalize its salaries and benefit policies to bring them in line with comparable agencies.

To ensure that it only assigns purchasing cards to appropriate staff, and to verify that staff use purchasing cards only for allowable and necessary expenses, the State Bar should immediately develop a policy that limits issuing purchasing cards to employees who have a demonstrated business need and should ensure that its records of employees' credit limits reflect those established with the bank.

To demonstrate its commitment to the board's prohibition of all State Bar spending on alcohol, the State Bar should immediately update its procurement manual to reflect this prohibition.

To ensure that its costs are reasonable and appropriate, the State Bar should update its meal and catering policy to align with the meal policy of the State's Executive Branch and should require individuals attending committee meetings for the State Bar to comply with standard meal per diem rates.

To make certain that the costs for sections events are reasonable and prudent, the State Bar should require that the sections follow the State Bar's catering and travel policies.

To make certain that its lobbying expenses are reasonable and cover only allowable activities, the State Bar should amend its lobbying contracts to require detailed invoices that support the invoiced amount.

To ensure that it contracts only for appropriate and necessary services from outside law firms at a prudent rate, the State Bar should formalize a policy covering its informal practices of assessing the need for legal services and determining the qualifications and reasonableness of the rates for prospective law firms.

The State Bar should, by December 2017, identify key goals and metrics to measure how well its attorney discipline system is meeting the State Bar's core mission to protect the public from attorney misconduct.

Agency Comments

In its response to the audit, the State Bar generally agrees with the recommendations in our report, and it has already begun implementing some of them; however, it expressed concerns about certain recommendations.

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Introduction

Background

The State Bar of California (State Bar) is a public corporation within the Judicial Branch of California (Judicial Branch). The State Bar is governed by a 19-member board of trustees (board)—six members are elected from State Bar members, five members are appointed by the Supreme Court of California (California Supreme Court), and the remaining eight members are appointed by the Governor and the Legislature. The state constitution requires that every person admitted and licensed to practice law in California belong to the State Bar unless the individual holds office as a judge in a court of record. As of May 2017, the State Bar had approximately 262,000 members. As indicated in the text box, state law establishes public protection as the highest priority of the State Bar and its board in exercising their licensing, regulatory, and disciplinary functions.

The State Bar's Attorney Discipline System

According to the State Bar, the attorney discipline system is the central component of its mission to protect the public, and it is critical to achieving the objectives of California's regulatory and discipline system for lawyers. The discipline system is designed to protect the public, the courts, and the profession from attorneys who violate ethical rules that govern attorney conduct in California. The State Bar's discipline system consists of several different groups, including those shown in the text box. Together, the Office of the Chief Trial Counsel (Chief Trial Counsel) and the State Bar Court are responsible for investigating, prosecuting, and adjudicating complaints against attorneys, when warranted.

An audit report that we issued in June 2015 concluded that, although the State Bar likely did not have adequate staffing for its attorney discipline system, it had reduced its excessive backlog of disciplinary cases by imposing lower levels of discipline, reassigning staff from working on other duties to focus exclusively

The State Bar's Core Mission and Key Responsibilities

Core Mission

Protection of the public shall be the highest priority for the State Bar and its board in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Key Responsibilities

- Regulating the conduct of attorneys through an attorney discipline system.
- Administering the exam for admission to the California State Bar.
- Regulating mandatory continuing legal education.
- Administering its Client Security Fund to relieve or mitigate losses caused by the dishonest conduct of attorneys.

Source: Business and Professions Code.

The State Bar's Attorney Discipline System

The State Bar's attorney discipline system encompasses several functional areas, including the following units:

- **Chief Trial Counsel**—Investigates and prosecutes attorneys for violations of the Rules of Professional Conduct and the State Bar Act.
- **State Bar Court**—Hears disciplinary matters and recommends to the California Supreme Court disciplinary actions.
- **Office of Probation**—Monitors disciplined attorneys who have been ordered to comply with probation.

Source: National Center for State Courts' State Bar of California Workforce Planning Report, May 2016.

on decreasing the backlog, and implementing other temporary staffing decisions.¹ The backlog is generally defined as the number of complaints as of December 31 of the preceding year that were pending beyond six months after receipt without dismissal, admonition, or the filing of a notice of disciplinary charges. In its May 2016 backlog report, the State Bar used average complaint processing times to determine that it will need an additional 81 staff members to address its backlog of attorney discipline complaints.

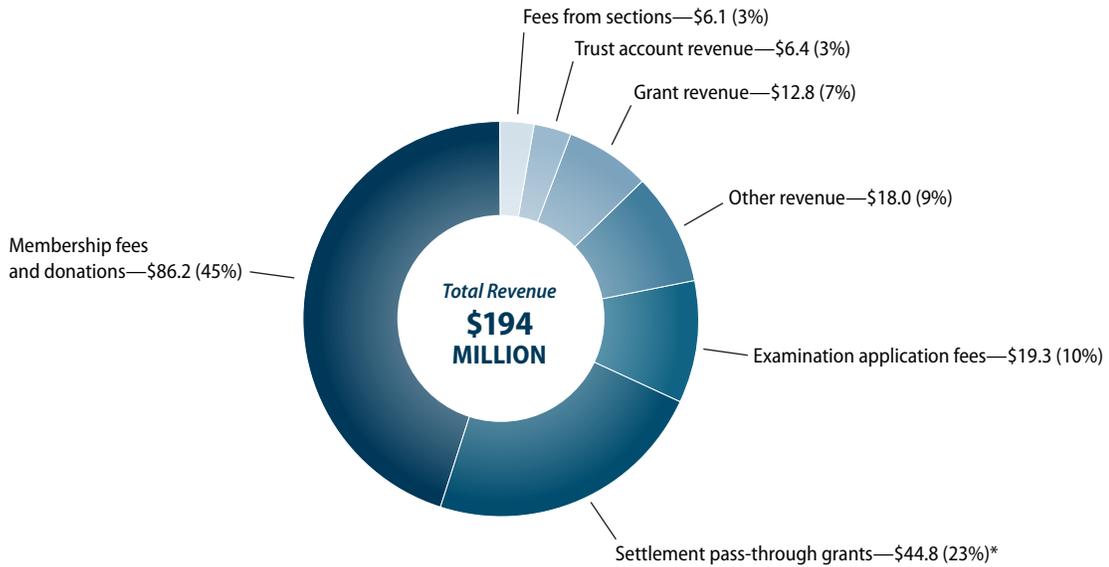
The State Bar's Revenue Sources

The State Bar's revenue totaled nearly \$194 million in 2016, a 29 percent increase from the prior year. The increase resulted primarily from an influx of settlement grant funds that the State Bar distributes to legal aid organizations. As Figure 1 shows, the State Bar received \$86 million in member fees and donations in 2016, representing 45 percent of its total revenue. Through an annual fee bill the Legislature authorizes the State Bar to impose on its members annual dues up to a specified maximum. Parts of the membership fee are mandatory, and they support such programs as the attorney discipline system and the Client Security Fund; members can choose to opt out of other parts of the fee, like those that support lobbying. Members can also pay voluntary fees to the State Bar's sections, which are voluntary organizations of attorneys and associates who share a professional area of interest. The sections offer educational programs to their members in various fields of law, including family and labor law, intellectual property, trusts and estates, and antitrust law. The sections allow members to expand their professional contacts and to serve the profession, the public, and the legal system. The voluntary fees are usually \$95 a year per section. In 2016 voluntary member fees provided more than \$6 million in revenue to the sections.

In 2014 the U.S. Department of Justice reached a civil settlement with Bank of America to resolve federal and state claims for financial fraud leading up to and during the financial crisis. According to the settlement agreement, the State Bar is responsible for allocating Bank of America's grants to legal aid organizations in California that provide legal assistance for foreclosure prevention and community redevelopment (settlement grants). Revenue from the settlement grants increased from \$6 million in 2015 to \$45 million in 2016.

¹ See our report titled *State Bar of California: It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability*, Report 2015-030, June 2015.

Figure 1
The State Bar’s \$194 Million in Revenue for 2016
(Dollars in Millions)



Source: The State Bar’s 2016 audited financial statement.

* In 2014 the U.S. Department of Justice reached a civil settlement with Bank of America to resolve federal and state claims for financial fraud leading up to and during the financial crisis. The State Bar is responsible for allocating Bank of America’s grants to legal aid organizations in California that provide legal assistance for foreclosure prevention and community redevelopment.

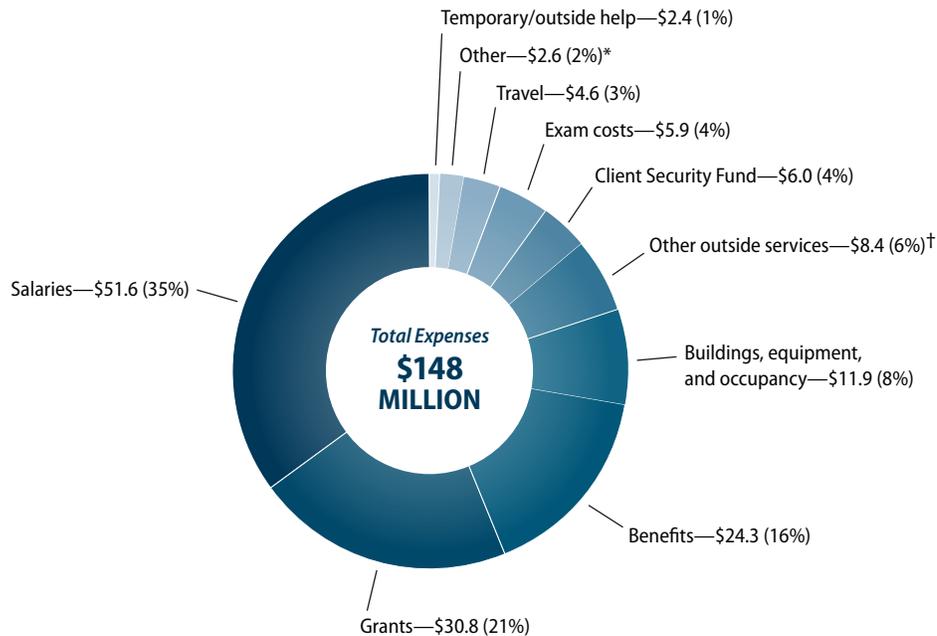
The State Bar’s Expenses

The State Bar’s expenses totaled \$148 million in 2016, with the largest portions going to pay for salaries, benefits, and grants, as Figure 2 on the following page indicates. The State Bar’s expenses included \$52 million in salaries and \$24 million in benefits, representing a combined 51 percent of its total expenses. Settlement grants and grants to provide free legal services to indigent people totaled \$31 million, or 21 percent of its total expenses.

Outside Scrutiny of the State Bar’s Operations

The State Bar has faced scrutiny of its operations from our past audits and by the Legislature, including the Assembly Committee on Judiciary (Judiciary Committee). Our June 2015 audit report revealed that although the State Bar had reduced its backlog of discipline cases, the severity of the discipline it imposed on attorneys who failed to fulfill their professional responsibilities decreased.

Figure 2
The State Bar's \$148 Million in Expenses for 2016
(Dollars in Millions)



Source: California State Auditor's analysis of the State Bar's JD Edwards EnterpriseOne data.

* *Other* includes expenses for postage, telephone, and office supplies, among other expenses.

† *Other outside services* includes expenses for professional services, outside printing, and bank processing fees, among other expenses.

Additionally, our May 2016 audit report concluded that the State Bar needed greater transparency in its communications.² For example, the State Bar did not inform stakeholders that it lacked the funds necessary to reimburse members of the public who suffer financial losses because of dishonest attorneys. At the end of 2015, it had a backlog of roughly 5,500 applications for Client Security Fund payouts totaling \$19 million, at a time when there was only \$2.2 million available in its Client Security Fund. The State Bar also had not clearly reported its budget assumptions to the Legislature, even though the Legislature relies on that budget to ensure the reasonableness of the State Bar's fees.

The State Bar has also faced scrutiny from the Legislature. In August 2016, the Judiciary Committee held a hearing on the annual fee bill, which authorizes the State Bar to impose annual dues on its members up to a specific maximum. After the hearing, the Judiciary Committee sent a letter that same month and another

² See our report titled *The State Bar of California: Its Lack of Transparency Has Undermined Its Communications With Decision Makers and Stakeholders*, Report 2015-047, May 2016.

letter in November 2016 requesting timely, complete answers to a variety of the committee's questions. The letters included questions about section activities, the cost and funding of the State Bar's annual meetings, catering and alcohol expenses, and how it prioritizes discipline cases. Both the Assembly and the Senate proposed reforms to the State Bar in their respective fee bills. However, the Legislature adjourned without passing a fee bill. Thus, the Legislature did not grant the State Bar authority to collect membership dues for 2017. In response, the California Supreme Court directed the State Bar to submit a request to it permitting the State Bar to impose an interim regulatory assessment on attorneys. The California Supreme Court later granted the State Bar's request, authorizing the collection of an interim special regulatory assessment in 2017 of \$297 from each member for the single purpose of providing funding for attorney discipline activities. The California Supreme Court also appointed a special master to supervise and oversee the collection, disbursement, and allocation of the special assessment funds, and it required that the special master ensure that the State Bar uses these funds exclusively for maintaining, operating, and supporting the attorney discipline system.

If passed by the Legislature, the current fee bill would allow the State Bar to collect member fees for 2018 and 2019, and it proposes to modify the State Bar's structure. Specifically, it proposes separating the sections from the State Bar and establishing the California Bar Sections Association (Sections Association) as a private nonprofit corporation governed by its own board of governors. The fee bill would require the State Bar to continue to collect the membership fees for these voluntary sections. The findings and declarations accompanying the bill indicate that this separation would enable the State Bar to focus on its primary mission of protecting the public from attorney misconduct while allowing the Sections Association to advance the public interest by providing educational programs and materials to members of the State Bar and the public, supplying expertise and information on pending legislation, and advancing the ethical practice of law. While the Legislature considers these structural reforms, we have focused this audit on the State Bar's responses to criticisms and questions related to its expenses.

Scope and Methodology

The Business and Professions Code requires the State Bar to contract with the California State Auditor to conduct performance audits of the State Bar's operations every two years. For this audit the scope includes eight audit objectives. Table 1 on the following page lists the audit objectives and the methods we used to address them.

Table 1
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	<ul style="list-style-type: none"> Reviewed relevant laws and other background materials related to the State Bar. Reviewed the Rules of Procedures of the State Bar.
2 Describe which categories of State Bar expenses have increased the most over the past three years and evaluate both the reasons and the State Bar's efforts to control such costs.	<ul style="list-style-type: none"> Obtained and reviewed the State Bar's expenditure data for 2014 through 2016 and identified the categories that have increased the most over time. Interviewed State Bar officials to determine the reasons for the increases in expenses, including salary and benefit expenses, and to identify any efforts to control these costs.
3 Examine the management processes the State Bar has implemented to reduce or control costs to ensure that all expenses are reasonable and appropriate, particularly expenses related to travel, reimbursed meals, catered events, and meetings.	Interviewed State Bar personnel and reviewed the State Bar's policies related to travel, meals, and meetings to identify changes the State Bar has made to control costs and ensure the expenses are reasonable and appropriate.
4 For a selection of expenses, determine whether the expenses are allowable, reasonable, and consistent with the purposes of their funding sources and the mission of the State Bar.	<ul style="list-style-type: none"> Reviewed a selection of 90 expenses occurring from 2014 through 2016. These included expenses related to catered events, alcohol, and travel expenses, among others. To determine whether the selected expenses were allowable, we tested the expenses against State Bar procurement and travel and business expense policies. To determine whether the selected expenses were reasonable and consistent with the purposes of their respective funding sources, we reviewed the State Bar's listing of object codes and judgmentally selected expenses from several of them. We reviewed the expenses to ensure that the transactions appeared to align with the purpose of the object code.
5 Describe the conditions under which it is appropriate for the State Bar to expend resources on lobbying activities, and determine whether these conditions were met for a selection of the State Bar's lobbying expenses.	<ul style="list-style-type: none"> Reviewed the relevant U.S. Supreme Court decision regarding appropriate conditions for the State Bar to expend resources on lobbying activities. Interviewed State Bar personnel and reviewed audited financial statements, financial data, and individual lobbying expenditures to determine whether the State Bar had complied with relevant restrictions on lobbying expenditures.
6 Describe the results of the recent State Bar salary survey conducted by an outside consultant and determine whether the State Bar has taken appropriate action in response to the survey results.	<ul style="list-style-type: none"> Obtained and reviewed the consultant's April 2017 total compensation study. Reviewed relevant State Bar employment rules and regulations and its memorandum of understanding with its represented employees' union. Interviewed State Bar personnel regarding the results of the compensation study and the State Bar's plan to implement the consultant's recommendations.
7 Determine whether any core mission functions of the State Bar, including the disciplinary function and its provision of low-cost legal services, have been underfunded as the result of a lack of control efforts in other areas.	<ul style="list-style-type: none"> To identify the core mission functions of the State Bar we reviewed state law and State Bar reports, and interviewed officials at the State Bar. According to the State Bar, the attorney discipline system is the central component of its public protection mission and is critical to achieving the objectives of California's regulatory and discipline system for lawyers. To determine whether the core mission functions are underfunded, we reviewed the State Bar's budgets, audited financial statements, spending plans, and backlog reports.
8 Review and assess any other issues that are significant to the audit.	<ul style="list-style-type: none"> To gain an understanding of the internal controls and work environment at the State Bar, we surveyed its employees using an electronic questionnaire. To describe the conditions under which it is appropriate for the State Bar to hire outside counsel, we interviewed State Bar staff and reviewed State Bar rules outlining the use of outside counsel. Reviewed the State Bar's expenses for outside legal counsel from 2014 through 2016. To determine whether the State Bar's contracts with outside counsel were appropriate, we reviewed invoices from seven different contracts.

Sources: California State Auditor's analysis of state law, planning documents, and information and documentation identified in the table column titled *Method*.

Assessment of Data Reliability

In performing this audit, we obtained electronic data files extracted from the information system listed in Table 2. The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support findings, conclusions, or recommendations. Table 2 describes the analyses we conducted using data from this information system, our methods for testing, and the results of our assessment.

Table 2
Methods Used to Assess Data Reliability

INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
State Bar JD Edwards EnterpriseOne (JDE) data Accounting data as of March 27, 2017	To categorize and total expense transactions from 2014 through 2016.	<ul style="list-style-type: none"> We performed data-set verification procedures and electronic testing of key data elements and did not identify any issues. We reviewed existing information to determine what is already known about the data and found that prior audit results indicate the JDE data is sufficiently reliable for this audit purpose from 2014 through 2015. To test the accuracy of the JDE data, we relied on previous testing for the years 2014 through 2015. For 2016, we traced key data elements to supporting documentation for a selection of five expense transactions and found no errors. To test the completeness of the JDE data, for 2014 through 2016 we traced expense transaction totals from the JDE data to the State Bar's audited financial statements and found the data to be materially complete. 	Sufficiently reliable for this audit purpose.

Sources: California State Auditor's analysis of various documents, interviews, and data obtained from the State Bar.

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Audit Results

Most State Bar Staff Receive Higher Compensation and Work Fewer Hours Than Do Staff at Comparable Agencies

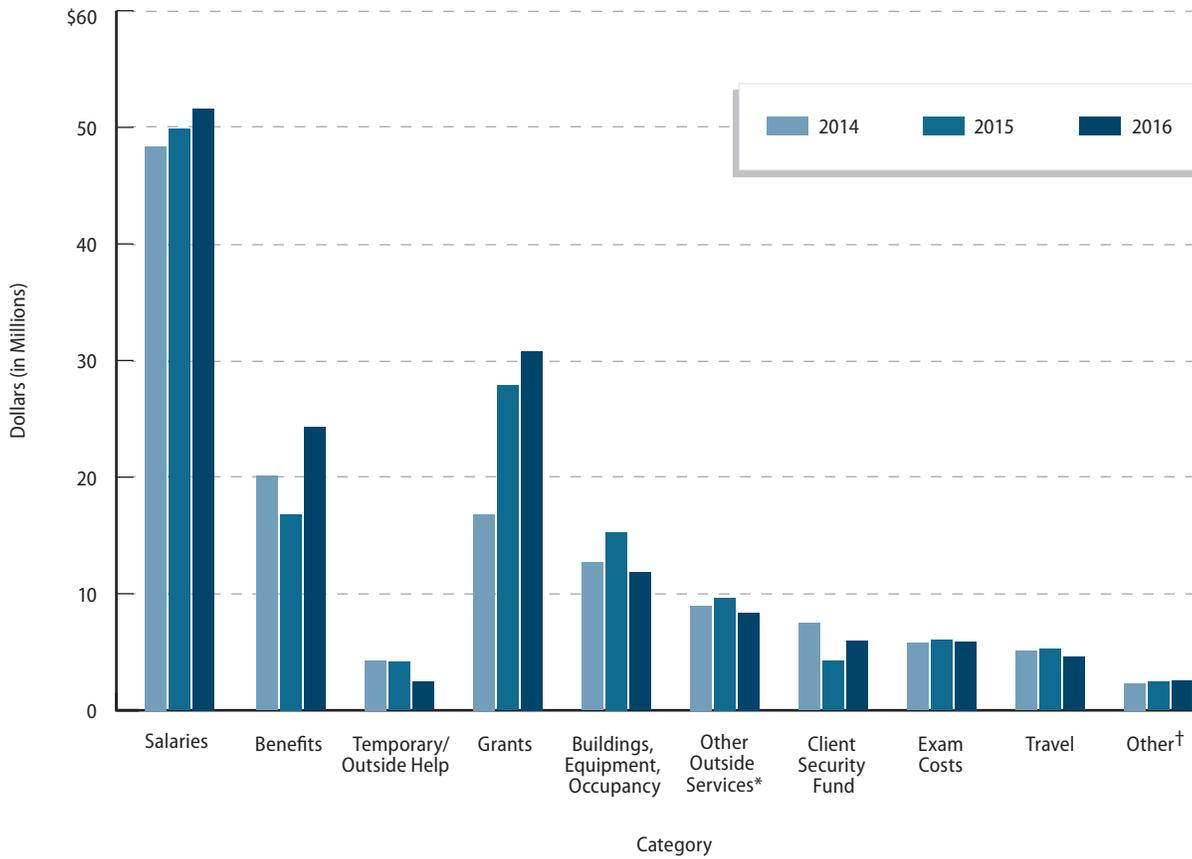
An April 2017 compensation study surveyed a selection of State Bar job classifications and determined that the high ends of the base salary ranges that the State Bar pays (maximum base salaries) that net to an average of 10 percent more than the median base salaries at comparable agencies.³ The State Bar's total expenses grew from \$132 million in 2014 to \$148 million in 2016 (a 13 percent increase). As Figure 3 on the following page shows, its largest expenses included salaries, which increased by \$3 million over these three years (a 7 percent increase), while benefits increased by \$4 million over that same period (a 21 percent increase). The State Bar has not conducted an in-depth update of its job classifications since 2000 and has not reviewed its compensation against comparable agencies since 2006. The State Bar's chief operating officer also confirmed that the State Bar does not currently have a compensation policy to review its salary and classifications against a comparable market on an ongoing basis.

In response to a 2016 state law requiring it to conduct a one-time compensation and benefit study of those classifications required to conduct disciplinary activities, the State Bar retained the consultant to conduct an agencywide total compensation study. The consultant compared the State Bar's salaries and benefits against those of 16 similar agencies, including local government, the State's Judicial and Executive branches, and private sector agencies. Because the State Bar has offices in San Francisco and Los Angeles and competes for talent with private sector agencies, the consultant included private sector salary data for both cities in the compensation study.

In its April 2017 compensation study, the consultant identified that most State Bar employees do not work a 40-hour workweek. Instead, it found that all State Bar employees, excluding attorney classifications, work a 7.25-hour workday and a 36.25-hour workweek. The consultant also identified this reduced workweek as an outlier among comparable agencies. As of April 2017, we determined that 405 of the State Bar's 506 full-time staff—or 80 percent—were working this 36.25-hour workweek, including represented and nonrepresented employees. The State Bar's records indicate that this shortened workweek has been in place for at least 30 years, based on its inclusion in a 1984 memorandum of understanding with represented staff. However, none of the current management staff or the previous acting executive director could explain the origin of this practice.

³ The consultant originally surveyed 21 State Bar classifications and found that the State Bar pays base salaries that are on average 11 percent higher than the median base salaries at comparable agencies. However, we confirmed with the State Bar and the consultant that only 14 of the 21 classifications should have been included in the salary calculation. The resulting correction reduced the average salary amount the State Bar pays over the market median to 10 percent.

Figure 3
The State Bar’s Expenses From 2014 Through 2016



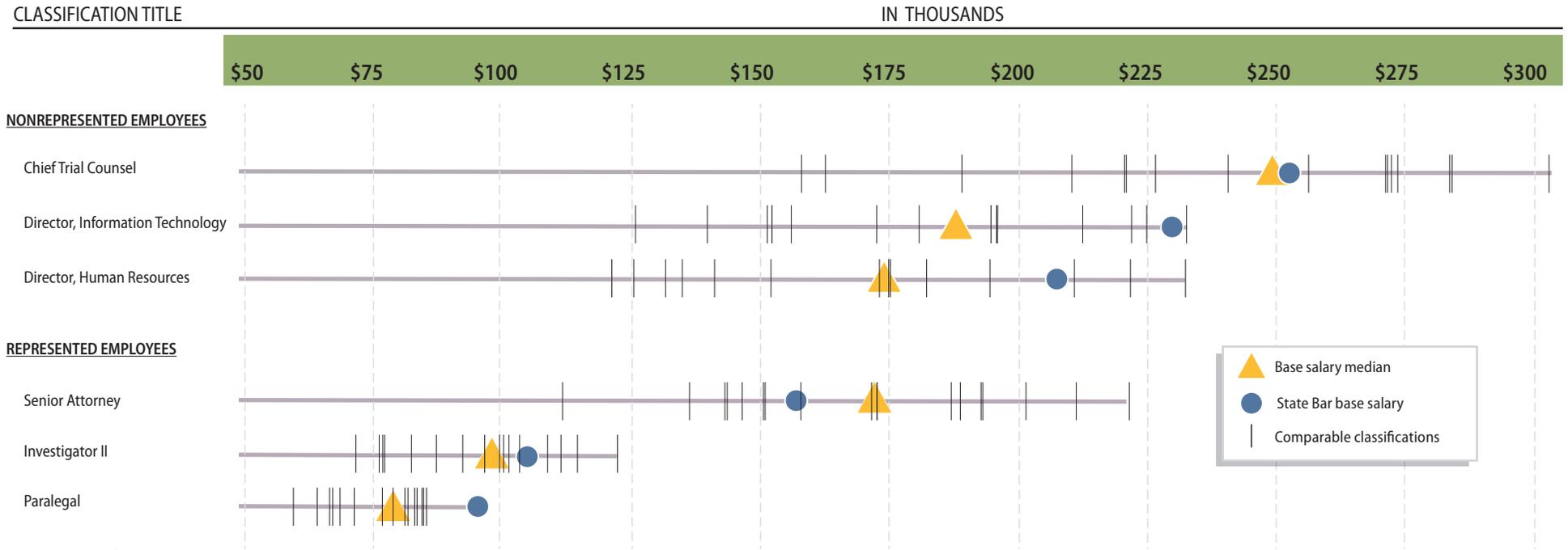
Source: California State Auditor’s analysis of the State Bar’s JD Edwards EnterpriseOne data.

* *Other Outside Services* include expenses for professional services, outside printing, and bank processing fees, among other expenses.

† *Other* includes expenses for postage, telephone, and office supplies, among other expenses.

To compare the State Bar’s salaries with those of comparable agencies it identified, the consultant converted the State Bar’s monthly salaries to a 40-hour workweek equivalent and found that the State Bar pays base salaries that net to an average of 10 percent above the labor market median for 14 surveyed classifications. Specifically, the study found that five of six represented classifications and five of six nonrepresented classifications are paid above the market median base salaries. The State Bar also pays the remaining two classifications of legal secretary II and fiscal services specialist, which include both represented and nonrepresented employees, base salaries above the market median. For example, as Figure 4 shows, the maximum annual base salary of the State Bar’s paralegal classification is \$96,300—17 percent above the labor market median, and the senior attorney (litigation) classification maximum annual base salary is \$157,000—9 percent below the market median. Using the numbers of employees staffed in the 14 surveyed job classifications, we calculated that, overall, the State Bar’s maximum annual base salaries are \$418,000 above the market median annual salaries for 2016. Figure B beginning on page 42 in Appendix B presents

Figure 4
Comparison of the Salaries for the State Bar with Comparable Positions in Similar Agencies



Source: The consultant's study of State Bar employees' total compensation, April 2017.

Note: This figure presents six job classifications and their maximum annual base salaries, which the consultant converted to reflect a 40-hour workweek: the three classifications that have the most represented employees and the three that have the highest maximum base salary of the nonrepresented employees surveyed. Figure B beginning on page 42 in Appendix B presents information for all 14 classifications the consultant reviewed.

Contributions to Medical Insurance Benefits for Each Employee by the State Bar, the Judicial Council, and the State's Executive Branch

State Bar

- Employer-paid medical premiums for nonrepresented employees, including executive management: \$2,673 per employee
- Employer-paid medical premiums for represented employees: \$2,138 per employee

Judicial Council

- Employer-paid medical premiums for all employee categories: \$1,620 per employee

State's Executive Branch

- Employer-paid medical premiums for executive management, represented attorneys, hearing officers, and protective services and public safety employees: \$1,572 per employee*
- Employer-paid medical premiums for other represented employees—including professional, administrative, financial, and staff workers—and office and allied employees: \$1,469 per employee

Source: The consultant's study of State Bar employees' total compensation, April 2017. Amounts are maximum monthly contributions.

* In addition to covering medical insurance, this amount includes vision and dental insurance.

this information for all 14 job classifications that the consultant reviewed, along with the salaries of the comparable positions it identified.⁴

Further, the compensation study identified that the State Bar provides its nonrepresented staff with health care benefits that are more generous than those provided to its represented employees. Specifically, the State Bar pays 100 percent of the medical insurance premiums for nonrepresented employees, including executive management, compared to the 80 percent of the premiums it pays for its represented employees. Further, as the text box shows, the consultant's compensation study indicated that the State Bar's coverage for nonrepresented and represented employees is more generous than that of the State's Executive Branch and the Judicial Council of California (Judicial Council), which is also part of the State's Judicial Branch. In addition, the State Bar currently provides its executive management with lifetime post-retirement health care benefits if they have at least 15 years of service with the State Bar, at a total cost of \$961,000 for all retired executive employees in 2016. However, the State Bar does not offer this benefit to any other staff.

The consultant used market median data to make recommendations, as summarized in Table 3, that would help bring the State Bar's compensation practices in line with those of comparable agencies. According to the State Bar's chief operating

officer, the State Bar is attempting to adopt all of the consultant's recommendations. She indicated that the State Bar will only need the approval of the board to implement recommendations related to nonrepresented employees, but that it will need to negotiate with the represented staff's union to adopt the consultant's salary recommendations. The chief operating officer indicated that because the State Bar's negotiations with the union have been a slow process, she cannot anticipate when it will complete these negotiations.

In addition, the State Bar is working to implement the consultant's salary and classification recommendations and workweek hour changes for current nonrepresented employees. The State Bar received the consultant's final draft recommendations regarding salary and classification recommendations in February and

⁴ We also included the consultant's results for two executive positions in Figure B beginning on page 42 of Appendix B.

March 2017, respectively, and the final report in April 2017. However, the chief operating officer explained that its personnel system requires a manual adjustment to reflect the conversion from a 36.25-hour to a 40-hour workweek basis. The chief operating officer also confirmed that the State Bar will ask the board to adopt these recommendations for current nonrepresented employees at its July 2017 meeting, and she anticipates that the State Bar will implement them at that time. The State Bar has indicated that no current employees would receive a salary reduction. Nevertheless, these employees will be working more hours for the same salaries. Employees with salaries above the consultant’s recommended salary ranges will not be eligible for future merit-based wage increases, but they may be eligible for future cost-of-living adjustments.

Table 3
The State Bar’s Plans for Implementing Its Consultant’s Recommendations for Compensation, Workweek Hours, and Health Care Benefits

ACTION	IMPLEMENTATION DATE
For the State Bar’s represented employees: <ul style="list-style-type: none"> • Implement the consultant’s salary and job classification recommendations. • Transition employees to an eight-hour workday and a 40-hour workweek. 	Depends on the State Bar’s current negotiations with the union.
For the State Bar’s nonrepresented employees: <ul style="list-style-type: none"> • Implement the consultant’s salary and job classification recommendations. • Transition employees to an eight-hour workday and a 40-hour workweek. 	<ul style="list-style-type: none"> • Became effective for new employees hired on or after April 2017. • Plan to complete transition by July 2017 for all current employees.
Require contributions to health care costs equivalent to the contributions of represented employees.	Will become effective January 1, 2018.
For executive employees, require contributions to post-retirement health care costs at a rate equivalent to their contributions during employment.	Will become effective January 1, 2018, but only includes executive employees hired on or after January 1, 2018.
Develop a method to regularly compare all employee classifications and compensation—for both represented and nonrepresented employees—with those of comparable agencies.	Plan to complete development by December 31, 2017.

Sources: California State Auditor’s review of the consultant’s study from April 2017, meeting minutes from the board, State Bar rules and regulations for nonrepresented and executive staff, and an interview with the chief operating officer.

In April 2017, the board approved revisions to the State Bar’s rules for all new hires into nonrepresented positions to normalize the workweek to 40 hours and revise premium amounts for health care benefits. Additionally, for all nonrepresented employees hired on or after April 17, 2017, the State Bar implemented the consultant’s recommended classifications and salary ranges based on a 40-hour workweek. Further, as indicated in Table 3, effective

January 2018 the State Bar will require all staff—represented and nonrepresented—to contribute to health care benefits at the same rate. However, as of May 2017, the chief operating officer told us that the State Bar has not established the rate for all employees because it will be based on the rate agreed upon with the union. Also, the State Bar will require executive employees hired after January 1, 2018, to contribute to the cost of their post-retirement health care. The chief operating officer explained that the State Bar is not implementing these changes until January 2018 because it believes that a midyear change to its health care plan will result in a rate increase and possibly cause one of the State Bar’s two insurance providers to withdraw its coverage. In addition, the State Bar hired an actuary to assess the potential costs of providing post-retirement health benefits to all State Bar employees, and anticipates the analysis will be complete by June or July 2017.

The State Bar Lacks Effective Management Processes to Ensure That Its Travel and Catering Costs Are Reasonable

Although the State Bar has revised some of its expense policies to help ensure a more prudent use of its funds, it still lacks effective management processes—or controls—to ensure that its expenses are reasonable and appropriate. As part of our audit we reviewed 30 expenses from each of the years 2014 through 2016, for a total of 90 expenses. Although the State Bar revised its policies and procedures during this time period, we found that it continues to lack effective management processes in certain areas. These expenses involved purchasing cards the State Bar issued, the purchase of alcohol, the State Bar’s use of higher meal per diem rates for catered events, and the costs of sections’ events. We discuss our concerns with each of these areas in the following sections.

The State Bar Has Poor Controls Over Its Purchasing Cards

The State Bar lacks appropriate oversight of its purchasing card program. As of June 2016, the State Bar had issued purchasing cards to 205 of its 541 employees—38 percent—with monthly credit limits ranging from \$5,000 to \$75,000. In 2016 the State Bar spent nearly \$3.5 million through purchasing cards, an average of about \$290,000 each month. The State Bar does not adequately document the business need for issuing staff these purchasing cards, does not maintain justification for increasing a staff member’s credit limit, and infrequently reviews these credit limits.

The State Bar does not adequately document the business need for issuing staff purchasing cards, does not maintain justification for increasing a staff member’s credit limit, and infrequently reviews these credit limits.

According to the State Bar’s general procurement manual, the State Bar established the purchasing card program to provide an efficient means to make purchases. In particular, it issues purchasing cards

to employees to make low-dollar purchases easier, to eliminate the need to reimburse personal funds for business-related expenses and travel, and to diminish the use of petty cash funds. For a staff member to obtain a purchasing card, State Bar policy requires that the employee's senior director approve a card holder enrollment agreement form that specifies the employee's dollar limit per transaction and per month. However, the policy does not require documentation of the business need or justification for why the employee qualifies for the purchasing card. According to the State Bar's general services director (services director), it is up to each department head to determine which employees have an operational need for a purchasing card. He stated that the general policy is to issue cards to those employees who travel with some regularity or who purchase goods and services on behalf of their department.

As of June 2016, nearly one-third of the card holders were from the Office of Admissions (Admissions), which buys goods and services for the California Bar exams and sends a large percentage of its employees to staff those exams in multiple locations throughout the State twice a year. However, 40 Admissions staff members only have the cards intermittently. These staff sign out cards before they travel for the exam and return the cards within five business days after the exam. Although these particular procedures appear to be appropriate, we are still concerned that the other 165 employees retain purchasing cards full time as of June 2016, and that the State Bar does not require Admissions or its other departments to document why it is appropriate for the staff to have purchasing cards.

Although the State Bar reviews expenses made through purchasing cards, it does not maintain justification for increasing staff members' credit limits. The State Bar requires purchasing card holders to submit original receipts along with their monthly purchasing card statement. It also requires the employee's manager and the procurement department to review purchasing card transactions and receipts. All of the purchasing card expenses we reviewed had supporting receipts. Furthermore, the State Bar has a process to cancel purchasing cards when employees leave the State Bar. However, our review found that purchasing card credit limits documented in the approved enrollment forms often did not reflect the employee's actual purchasing authority. We reviewed the purchasing card limits for 23 individuals and found that 19 had different credit limits in 2016 than what was documented on their enrollment agreement forms. For example, we noted eight instances in which the card holders' documented monthly credit limits ranged from \$5,000 to \$20,000, but according to the bank that issued and administers these cards, their limits were set at \$75,000.

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According to the services director, the State Bar maintains card holder information, including credit limits, in the electronic system of the bank that provides its credit card services. To change an employee's existing credit limit, he indicated that the employee's senior director will email the State Bar's general services unit, which then enters the credit limit change into the bank's system. The services director believes this process is an appropriate way to manage credit limit changes because only key staff within his unit have access to change credit limits with the bank. However, the services director acknowledged that his unit does not keep the emails from senior directors that request these changes. Lacking this information, we were unable to determine whether a senior director had approved any of the changes for the 19 employees we tested whose credit limits were increased or whether the changes were reasonable. Moreover, even after the State Bar tried to standardize credit limits in June 2016, it continued to lack a process to document the changes to these limits.

The State Bar's Standardized Credit Limits

In June 2016, State Bar's Office of General Services standardized the monthly credit limits for employee purchasing cards at the following rates:

- \$15,000—Executive director, chief operating officer, department heads.
- \$10,000—Supervisory and confidential staff, executive staff below department head level.
- \$5,000—Other staff who have purchasing authorization.
- Other exception amounts ranging from \$20,000 to \$75,000, if approved.

Sources: The State Bar's June 2016 email to department heads and the State Bar's policy for signature authorization levels.

In June 2016, the services director reviewed all purchasing card credit limits and created a tracking sheet to standardize these limits according to each employee's job position. The State Bar's revised credit limit policy is shown in the text box, and it generally assigned credit limits ranging from \$5,000 to \$15,000 to individuals. However, based on requests from department heads, the State Bar granted exceptions to 23 individuals to provide them with credit limits of \$20,000 up to \$75,000. For example, the senior director of education requested that the monthly credit limits of four employees increase from \$40,000 to \$75,000 because she wanted all section coordinators to have the same credit limit. In fact, 10 of the 12 employees with a \$75,000 credit limit work for sections.

The services director indicated that the tracking sheet was created specifically to facilitate the review and implementation of new limits for all card holders in June 2016. However, he acknowledged that it is not a mechanism that the State Bar maintains on a day-to-day basis for monitoring employees' credit limits, because it relies on the card holder information that its bank maintains. Nevertheless, the services director indicated that he was open to using the tracking sheet as a supplement to the bank's records. We believe that standardizing credit limits to job positions and requiring senior director approval for nonstandard credit limits is a good practice. However, to make this practice

effective, the State Bar also needs a control requiring it to actively track and monitor these credit card limits and document any properly approved nonstandard credit limits.

In addition, we question the business need for employees to have high credit limits. As we discussed earlier, the State Bar intended that purchasing cards be used for making low-dollar purchases. The services director indicated that staff sometimes pay for contracts with purchasing cards because it is often more convenient and efficient than paying by check. However, using purchasing cards for high-dollar purchases increases the risk of inappropriate expenses because the State Bar reviews the receipts only *after* paying the expense. In contrast, the first step in the State Bar's payment process for contracts is the review and approval of all invoices *before* paying those invoices, which provides the State Bar the opportunity to decide whether to incur the charge and make a payment. Also, because the State Bar, and not the individual card holder, is liable for charges made with the purchasing card, we believe the State Bar should restrict the use of purchasing cards to the original intent of low-dollar expenses.

The State Bar Has Revised Its Policies to Prohibit Alcohol Purchases

Until late 2016, the State Bar's policies allowed staff to purchase alcohol for events and meetings. However, in response to the Judiciary Committee's inquiries, the State Bar identified alcohol purchases totaling \$156,900 for various events, meetings, and meals between January 2015 and September 2016. Of this amount, \$148,200 came from the sections' funding, while the remaining \$8,700 came from other funding sources.⁵ In its September 2016 meeting, the board acted to prohibit all alcohol purchases regardless of funding source, effective January 1, 2017. The board indicated that it took this action in response to its independent auditor's identification of "significant sums of money spent on alcohol in 2015."

Although this action was an appropriate step on the board's part, the State Bar has not updated its procurement manual for contracted events to reflect the board's prohibition on alcohol purchases. The services director indicated that the State Bar has implemented the board's prohibition and stated that by January 2018 the State Bar will update the procurement manual to incorporate this new policy. He asserted that it will take until at least January 2018 to revise the manual because it covers all

The State Bar has not updated its procurement manual for contracted events to reflect the board's prohibition on alcohol purchases.

⁵ We identified five alcohol purchases totaling \$5,200 that the State Bar overlooked when reporting to the Judiciary Committee.

of the State Bar's procurement activities and the process to make these changes is time-consuming. However, to demonstrate its commitment to addressing this concern, we believe the State Bar should immediately update its procurement manual to reflect the board's prohibition on purchasing alcohol.

The State Bar Could Reduce Its Catering Costs

Although the State Bar recently imposed limits on its catered meals, it could further decrease its costs by aligning its policies with those of the State's Executive Branch. The State Bar's January 2016 travel policy defines catered meals as contracted food and beverage service at an event, but does not set limits on these costs. The 2016 travel policy further states that catered meals can be served on State Bar, hotel, convention site, or restaurant premises. In response to an inquiry from the Judiciary Committee, the State Bar recently performed an analysis of its on-site catering costs and determined it could have saved \$54,000 from January 2015 through September 2016 if it had limited its on-site catering costs to the State's per diem rate of \$41 per day. For off-site catering events, this analysis identified an additional \$57,000 the State Bar would have saved if it had held these events on-site and limited its catering costs to the State's per diem rates.

Comparison of the State Bar's Policy on Catered Meals With the Rules of the State's Executive Branch for Business Meals

State Bar's Travel Policy

Meals and refreshments may be catered at meetings and events provided that the attendees are not exclusively State Bar employees and that the subject matter of the event is not the State Bar's routine internal business or staff meetings.

State's Executive Branch Rules for Business Meals

- Members of nonsalaried boards, commissions, and duly constituted advisory committees may be reimbursed for actual meal expenses up to the State per diem rates.
- Business meals are not reimbursable when agencies call meetings with their own or other agencies' employees to conduct state business.

Sources: The State Bar's 2017 travel and business-related expense policy and the California Code of Regulations.

In February 2017, following this inquiry from the Judiciary Committee, the State Bar updated its travel policy to establish a spending limit for on-site catered meals to a daily rate of \$55 per person for meals at the San Francisco office and a daily rate of \$41 per person for meals at the Los Angeles office. The services director indicated that these rates are based on an analysis of the actual costs of on-site catering in 2015 and most of 2016. Prior to this policy update, the State Bar did not limit catering costs, and its policy indicated that meal per diem rates did not apply to catered meals.

From 2014 through 2016, the State Bar spent \$1.5 million on catering for purposes unrelated to its sections. According to the services director, catering for events that are not sponsored by the sections is almost exclusively related to the meetings of volunteers serving on nonsalaried boards, commissions, special committees, and standing committees (volunteers). For example, in 2014, the State Bar paid \$3,300 for catering breaks, breakfast, and lunch for 50 volunteers and staff attending a multiday meeting of the Committee of Bar Examiners. As indicated in the text box, the

State Bar's travel policy permits catering at events where the attendees are not exclusively State Bar employees. The services director further noted that because the committees are staffed by volunteers who meet to conduct State Bar business, State Bar policy has historically permitted catered meals in these instances. However, under the rules of the State's Executive Branch, volunteers may be reimbursed for actual meal expenses subject to standard per diem rates. As the State Bar indicated in its analysis of its catering costs, it would have achieved cost savings had it limited these costs to the State's per diem rates for meals.

Further, recognizing that off-site event costs are higher than for on-site events—particularly off-site catering compared to on-site catering—the State Bar revised its travel policy in February 2017 to state that all meetings and events should take place on-site at State Bar offices in San Francisco and Los Angeles. The revised policy states that staff must have a significant business need to hold an event off-site and must consider factors such as the cost of the off-site meeting space and catering and the proximity of the proposed off-site location to economical transportation and lodging options. The revised policy requires the approval of the State Bar's executive director or chief operating officer for using an off-site location and for off-site catering, but it does not place a limit on off-site catering costs. The services director indicated that he has not received any requests for off-site meetings of volunteers since the State Bar revised the policy in February 2017. He noted that volunteers held five off-site meetings in 2016 and three off-site meetings so far in 2017, but that all three 2017 meetings were under contract before the State Bar revised this policy in February 2017. Although the State Bar has implemented an off-site meeting policy, we believe it should limit the costs of catering at these events to the State's per diem rates.

The Sections' Travel and Meal Expense Practices Do Not Align With State Bar Policies

Although the State Bar has tightened its policies and practices for off-site events for volunteers, it has not taken sufficient steps to improve practices related to the sections' events. As indicated in the Introduction, the sections are voluntary organizations of attorneys and associates who share an area of professional interest. The sections offer educational programs to their members in various fields of law. The State Bar's director of education indicated that the sections typically hold their 200 educational programs, meetings, and events each year at off-site venues, for which they spent \$4.3 million on catering from 2014 through 2016. Although the 2018 fee bill proposes separating the sections from the State Bar into a private, nonprofit entity, the chief operating officer indicated

Although the State Bar has implemented an off-site meeting policy, we believe it should limit the costs of catering at these events to the State's per diem rates.

that until such a separation actually takes place, the sections must comply with the same policies as other State Bar staff regarding travel, purchasing cards, contracting, and business expenses. Further, the State Bar indicated to the Legislature in October 2016 that it was working to review its policies, including those for meals, awards, and lodging, to ensure that all State Bar entities are subject to one set of administrative controls, and it subsequently released its updated travel policy in February 2017. However, its revised policy and procedure for off-site events requires only State Bar staff—not the sections—to provide written justification of a significant business need for an off-site event. Specifically, the policy requires the sections to obtain approval of executive management before securing outside venues, but it does not require any written justification of the business need.

According to the services director, the State Bar does not see a need to require the sections to provide a written explanation of the business need for an off-site venue because the sections have typically held their events at off-site hotels and law schools to accommodate the nature of the sections' activities. For example, the sections hold events throughout the State to make them more accessible and because they need larger facilities than the State Bar can provide.

However, although the sections may need off-site locations for larger events, these off-site events typically have a higher cost. For example, in April 2016, the trusts and estates section held a four-day event at the Tenaya Lodge at Yosemite National Park at a cost of \$33,300. The charges for this event included \$13,500 in catering charges, part of which covered a dinner for 54 people totaling \$4,700, or \$87 per person—an amount that is \$64 more than the State Bar's dinner per diem rate of \$23. In addition to catering charges of \$13,500, this event also included expenses for purposes we believe were questionable. These questionable expenses included \$1,800 for items purchased from the resort that the State Bar indicated were room gifts to attendees, \$1,300 for hiring a disc jockey and a pianist, and \$1,775 for a bus tour of Yosemite, none of which appear to be reasonable or necessary to provide education at this event. The State Bar agreed that such expenses are not appropriate. Although the sections may need off-site locations for larger events, they should take measures to limit the cost of these off-site events to applicable per diem and lodging rates, and to incur only those expenses that are necessary.

Finally, sections frequently paid for hotel rooms that were above the lodging rate in the State Bar's travel policy. We reviewed 15 invoices in which the sections obtained hotel room rates in excess of what the State Bar generally allows. The lodging rates in these 15 invoices exceeded the State Bar's lodging rate by amounts ranging from

In April 2016, the trusts and estates section held a four-day event at Yosemite National Park at a cost of \$33,300. Questionable expenses included \$1,800 for gifts to attendees, \$1,300 for entertainment, and \$1,775 for a bus tour.

\$4 to \$330 per night, for a total of \$15,800 in excess charges. Regardless of whether the sections separate from the State Bar, they should implement controls to reduce costs and ensure the prudent use of funds.

The State Bar Does Not Request or Maintain Documentation From Its Lobbyists That Justifies Their Charges

The State Bar pays its lobbying expenses with voluntary fees only, thus enabling it to comply with legal and statutory restrictions. However, the State Bar may be paying more than is necessary for its lobbyists because it does not require them to justify the amounts they bill, which totaled \$768,000 from 2014 through 2016. A U.S. Supreme Court decision prevents the State Bar from using mandatory fees to pay for lobbying unless those lobbying activities are necessarily or reasonably incurred to regulate the legal profession or to improve the provision of legal services available to Californians. To ensure compliance with this ruling, the State Bar uses only voluntary fees to pay for its lobbying efforts.

The State Bar currently has two contracts for lobbying: one is for lobbying related to topics of interest to the sections, and the other is for lobbying related to legislation of membership fees and for advocating against bills that adversely affect its mission to protect the public, regulate the profession, and enhance the administration of justice. Under both contracts, the lobbyists provide services that include drafting legislation, gathering legislative support, and advocating on behalf of the State Bar or its sections for or against the passage of bills. The contracts authorize the State Bar to pay lobbyists up to \$13,500 and \$8,000 per month, respectively. Both contracts indicate that the monthly fees are based on the amount of time the lobbyists estimate it will take to provide services and the nature and quality of the work. However, both contracts fail to include provisions disclosing hourly billing rates or requiring the lobbyists to itemize the amounts they bill the State Bar. In the State Bar's contracts with other consultants, we observed that the consultants provided billings that listed the activities performed with the hours spent performing those activities. However, lacking these contract controls, both lobbyists billed the State Bar the maximum monthly amount that the contracts allowed over the three-year period we reviewed. The lobbyists billed the maximum monthly fee even in months when the Legislature was not in session, and did not provide documentation indicating what work they had performed.

We asked the lobbyists if they maintained support for their monthly invoices, and they informed us that although they had documentation related to work performed on behalf of the

The State Bar may be paying more than is necessary for its lobbyists because it does not require them to justify the amounts they bill, which totaled \$768,000 from 2014 through 2016.

State Bar, including emails and calendars showing the dates for legislation related to the State Bar, they do not maintain an itemized record of work performed each month. However, without an itemized invoice, and lacking documentation supporting the total amount paid for each invoice, we were unable to verify that the amounts the State Bar spent on its lobbying contracts were reasonable.

The chief operating officer and assistant general counsel defended this practice and expressed confidence that the State Bar was receiving maximum value for its lobbying contracts. Specifically, they, as well as the lobbyists, asserted to us that paying a flat monthly fee—a retainer—is a standard industry practice for contracts with lobbyists. Further, the State Bar and its lobbyists asserted that State Bar staff are in frequent and ongoing telephone and email contact to develop strategies and monitor outcomes of legislation.

However, we noted that some lobbyists are willing to itemize their costs. Specifically, the State Bar is renewing its lobbying contracts and received two bids for each lobbying contract. The State Bar ultimately selected the bids from its current lobbying firms based on an evaluation of expertise and cost. However, the bids the State Bar selected did not include cost estimates outside of a total monthly fee, while the competing bids included cost proposals with estimates of total hours and hourly billing rates for each level of the lobbyists' staff. Further, although both contracts are up for renewal, the State Bar indicates the new contracts will not require that the lobbyists provide an explanation of their activities on the monthly invoices.

Although both lobbyists' contracts are up for renewal, the State Bar will not require that the lobbyists provide an explanation of their activities on the monthly invoices.

Although the State Bar Reduced Costs Related to Its Contracts With Outside Counsel, It Could Make These Contracts More Transparent

Although the State Bar reduced the total amount that it spends on outside legal services from \$808,000 in 2014 to \$356,000 in 2016, it has not formalized its process to demonstrate its need for outside counsel. It is appropriate to retain outside counsel in certain circumstances, such as when in-house counsel lacks sufficient expertise to perform a particular legal service or if they have a conflict in a matter, such as when a current or former employee sues the State Bar. During 2016 the State Bar had 11 contracts with outside counsel, five of which it required due to conflicts. In addition to advice or representation provided by outside counsel, the State Bar also contracts with attorneys for other reasons, such as internal employment investigations. Further, according to the State Bar's rules, it must contract with an attorney to serve in the role of a special deputy trial counsel to

investigate a complaint that a member of the public files against a current or former State Bar employee. The general counsel asserted that since October 2015, State Bar staff have handled all new matters that have not involved a conflict. According to the Public Contract Code, state contracts for legal services are not subject to competitive bidding.

We reviewed expenses related to seven different legal services contracts from 2014 through 2016 and determined that all the expenses were allowable and were consistent with the purposes outlined in their contracts. However, we noted that two of the seven law firms billed the State Bar for work they performed four days before the contract approval date. Under State Bar policy, a contract is not effective until both parties sign it, and the policy indicates that the State Bar should not pay for expenses incurred before this time. Additionally, because of its informal selection process, we were unable to verify whether the State Bar had a need for its contracts with outside legal counsel, whether the selected firms were the most qualified, or whether the contracts themselves were reasonable.

The State Bar's general counsel has taken steps to reduce its reliance on outside counsel. Shortly after she was hired in October 2015, the State Bar's general counsel sent an email to her staff attorneys requiring them to provide their justification before using outside counsel for new matters. Additionally, the general counsel told us that she reviewed each existing contract for outside legal counsel and canceled one contract that she determined was no longer needed. Further, she asserted that as part of the current practice for contracting with outside counsel, the State Bar assesses whether its own attorneys can perform the legal work, considers its previous experience with law firms it has worked with in the past, trains attorneys to perform the work, and, only when deemed necessary, solicits proposals from several prospective firms. However, the State Bar has not documented in a policy or procedure this practice for determining the need for outside counsel and choosing the selected law firm.

The State Bar has reduced the number of outside counsel contracts from 15 in 2014 to 11 in 2016. According to the general counsel, although her predecessors used outside counsel liberally, she prefers to keep work in-house. To reduce the need for outside counsel, the general counsel indicated that she filled vacancies in her department with staff that have the expertise and interest in providing a full range of legal services. She noted that 12 of the current 13 attorneys in the Office of the General Counsel started after 2015. These new hires include a former New York assistant attorney general to litigate cases that were formerly handled by outside firms and an attorney with a background in antitrust law

Because of its informal selection process, we were unable to verify whether the State Bar had a need for its contracts with outside legal counsel, whether the selected firms were the most qualified, or whether the contracts were reasonable.

to help provide in-house expertise in that area. As of May 2017, the general counsel was working to fill two of the remaining three attorney vacancies in her office. She stated that, as current ongoing matters are resolved, she expects the number of contracts with outside legal counsel will decrease further. Nevertheless, the State Bar could improve its current practice by documenting the process that the current general counsel considers when deciding to contract for outside counsel and the associated costs. By formalizing these practices, the State Bar would ensure that they remain in place in the future and help to avoid its past reliance on outside counsel.

The State Bar's Attorney Discipline System Lacks Sufficient Resources and Needs Measurable Goals

The State Bar concluded in May 2016 that it lacks adequate resources to address its backlog of attorney discipline complaints and lacks measurable goals and metrics to determine how effectively it is meeting its core mission of protecting the public from attorney misconduct. Although the State Bar's discipline system has a persistent backlog—generally defined as the number of complaints as of December 31 of the preceding year that were pending beyond six months after receipt without dismissal, admonition, or the filing of notice of disciplinary charges—it continues to lack resources to ensure that it can resolve complaints in a timely manner. The amount the State Bar has spent on the attorney discipline system has increased only slightly over the past three years—rising from \$53.5 million to \$55 million. In 2016 the State Bar received more than 15,200 new complaints against California lawyers, a decrease of nearly 550 from the prior year. As indicated in Figure 5, although the number of unresolved cases at the end of 2016 decreased from the previous year, the backlog remained relatively constant at about 1,500 cases for 2015 and 2016.

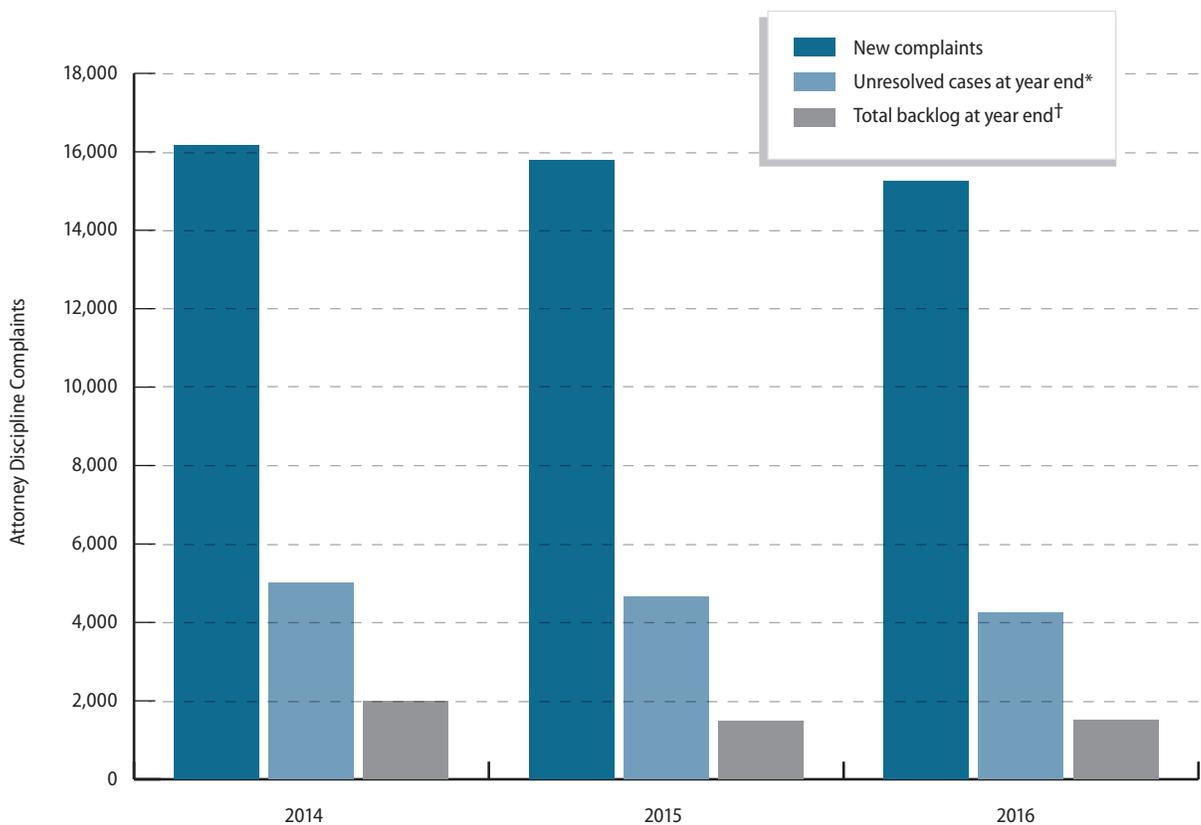
Although the State Bar's discipline system has a persistent backlog, it continues to lack resources to ensure that it can resolve complaints in a timely manner.

In its May 2016 backlog report, the State Bar concluded it would need an additional 81 staff at a projected cost of \$9.9 million to eliminate its backlog of attorney discipline complaints.⁶ Seventy percent of discipline system expenses are for the Chief Trial Counsel, which is responsible for investigating and prosecuting attorneys for misconduct. Although the number of staff within the Chief Trial Counsel has remained relatively constant in the past two years, in 2017 the State Bar plans to increase its funding for the Chief Trial Counsel by \$3.4 million and to add 14 positions using

⁶ As part of its September 2016 request for special regulatory assessment, the State Bar requested additional funding for the Chief Trial Counsel, although this request was rejected by the California Supreme Court.

the 2017 special assessment and internal cost savings. Additionally, 22 staff from the Chief Trial Counsel voluntarily separated from the State Bar as a result of the State Bar’s January 2017 reduction in force. Although the State Bar indicated that it plans on filling those positions, this would only put the State Bar back at its 2016 staffing levels and below its stated goal of 81 additional staff that it has asserted it needs to eliminate its backlog.

Figure 5
The State Bar’s New and Unresolved Attorney Discipline Complaints Backlog 2014 Through 2016



Source: The State Bar’s yearly discipline reports.

* *Unresolved cases* are all cases still pending, including backlogged cases.

† *Backlog* is generally defined as the number of complaints as of December 31 of the preceding year that were pending beyond six months after receipt without dismissal, admonition, or the filing of a notice of disciplinary action.

However, simply working toward a reduced backlog could lead to unintended consequences. Specifically, in our 2015 report we concluded that the State Bar’s consistent and effective discipline of attorneys who engage in misconduct is a crucial measure of its success in fulfilling its mission to protect the public. In that report, we found that when the State Bar had worked to reduce the backlog, it did so in part by decreasing the severity of discipline

that it imposed on attorneys.⁷ Although the State Bar tracks its complaints and reports on numerous data—including the number of complaints received, number of cases closed, and size of its backlog—it lacks goals and metrics that would help it determine whether the discipline system is achieving its broader mission to protect members of the public from attorney misconduct.

In addition to tracking its backlog of complaints, the State Bar tracks the types of cases it investigates, such as claims of fraud or unauthorized practice of law by former attorneys, and it records the outcomes of the complaints it receives. However, these statistics are not indicators of the overall success of the discipline system. The State Bar's director of the Office of Research and Institutional Accountability (research director) acknowledged that these data alone are not appropriate for use by the State Bar in determining the overall success of its mission to protect the public.

The research director indicated the State Bar is working to develop goals for measuring the success of its discipline system as well as implementing a client satisfaction survey to accompany closing letters on discipline cases. Specifically, he informed us that the State Bar is currently reviewing its discipline system and assessing the data it tracks and does not track, and it is determining the value of those data. He confirmed that once the State Bar completes the analysis at the end of the year, it will identify goals for the discipline system as a whole and will develop metrics to track and evaluate how successfully it attains those goals, although he cautioned that defining success as reaching a particular number is not a useful way of improving operations. We agree, and as a result, we believe the State Bar should ensure that it is identifying realistic goals for the discipline system as a whole. However, until the State Bar has identified and committed to meeting set goals and establishing useful metrics for its discipline system, it will not be able to ensure that it is fulfilling its core mission of protecting the public.

Recommendations

To better align its compensation practices with those of comparable agencies, the State Bar should update and formalize its salaries and benefit policies by doing the following:

- Continue negotiations with the union to transition represented employees to an eight-hour workday and a 40-hour workweek, and to implement new salary and job classifications.

⁷ See our report titled *State Bar of California: It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability*, Report 2015-030, June 2015.

- Implement an eight-hour workday and a 40-hour workweek, as well as new salary and job classifications, for its nonrepresented employees by July 2017.
- Require a contribution rate to health care costs for nonrepresented employees that is equal to the contribution rate for represented employees by January 2018.
- For executive employees hired on or after January 1, 2018, require that contributions to post-retirement health care costs are at a rate equivalent to their contributions during employment at the State Bar.
- Develop and adopt a formal policy by December 2017 to regularly compare staff compensation and benefits with those of comparable agencies.

To assign purchasing cards only to appropriate staff, ensure that the State Bar's records of employees' credit limits reflect those established with the bank, and to verify that staff use purchasing cards only for allowable and necessary expenses, the State Bar should do the following immediately:

- Develop a policy that requires the justification of the business needs for employees to receive purchasing cards, and use this policy to limit the number of staff issued a purchasing card.
- Restrict the use of purchasing cards to its original purpose, which was for low-dollar and frequently occurring purchases. For purchases above \$5,000, the State Bar should require the vendor to bill for payment.

To demonstrate its commitment to the board's prohibition of all State Bar spending on alcohol, the State Bar should immediately update its procurement manual to reflect this prohibition.

To ensure that its costs are reasonable and appropriate, the State Bar should update its meal and catering policy to align with the meal policy of the State's Executive Branch and should require individuals attending committee meetings for the State Bar to comply with standard meal per diem rates.

To make certain that the costs for section events are reasonable and prudent, the State Bar should require that the sections follow the State Bar's meal per diem and lodging rates, and require the sections to limit expenses for events to only those activities that are reasonable and necessary. For off-site events, the State Bar should require the sections to follow the State Bar's existing policy of

providing written justification of a significant business need to hold the event off-site and obtain approval from the executive director or chief operating officer.

To ensure that its lobbying expenses are reasonable and cover only allowable activities, the State Bar should revise the terms of its pending lobbying contracts to require that the lobbyists provide sufficiently detailed invoices that support the amounts they bill for their services.

To ensure that it contracts only for appropriate and necessary services from outside law firms at a prudent rate, the State Bar should put the following informal practices into a written policy:

- An assessment of the need for outside counsel, including whether the State Bar's attorneys can provide the specified legal services.
- An evaluation of the State Bar's past experiences with the law firms being considered.
- The process the State Bar uses to select the outside law firm, including documentation of proposals from other prospective law firms and the costs it considers reasonable for the legal services.

To reduce its reliance on outside legal counsel, the State Bar should continue its efforts to hire staff to fill its remaining vacant attorney positions.

To increase transparency, the State Bar should disclose annually to the board a list of all contracts with outside law firms—including a description of the services provided, the need for such contracts, and the value and length of the contracts.

To better measure how well its attorney discipline program is meeting the State Bar's core mission to protect the public from attorney misconduct, the State Bar should, by December 2017, identify key goals and metrics for the attorney discipline system.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: June 27, 2017

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

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Appendix A

RESULTS OF OUR EMPLOYEE SURVEY AT THE STATE BAR

To gain an understanding of the work environment at the State Bar, we surveyed nearly 550 State Bar employees in April 2017. We notified employees about this survey by email and collected their electronic responses. The survey asked employees to specify whether they strongly agreed, agreed, disagreed, or strongly disagreed with the statements listed in Table A beginning on the following page. The statements generally related to State Bar's control environment, risk management, control activities, monitoring, and communication. We computed an average response score for each statement by assigning a response score of 4 to "strongly agree", 3 to "agree", 2 to "disagree", and 1 to "strongly disagree." We also asked State Bar employees to provide us with additional information for questions with which they indicated disagreement or strong disagreement. We received 354 valid responses from State Bar employees, although not all employees answered each question. We ensured that we included only one survey response per employee by assigning and requiring a code from each employee. Table A shows the aggregated results of this survey.

Employees generally indicated that they are accountable for defined, measurable tasks and objectives. They indicated that they have sufficient information to do their jobs and receive adequate supervision. Employees typically believe their direct superiors place a sufficient emphasis on the importance of integrity, ethical conduct, fairness, and honesty. Even so, survey respondents used their opportunity to write in additional comments to express concerns over the tone from the top, including a lack of trust in the State Bar's management, and concerns over staffing levels at the State Bar. Further, we found two instances in which the average score in response to a question indicated a neutral or negative aggregate response. Those two questions were on the existence of an atmosphere of mutual trust and open communication between management and employees, and on the impact personnel turnover has had on the ability of individual work units to effectively complete their tasks.

We raised these respondent concerns with the State Bar, as well as respondent concerns that were outside the scope of our audit related to the improper appointment of individuals into particular positions. The State Bar indicated that staff concerns over turnover may be the result of its January 2017 reduction in force, which we mentioned earlier. As part of this reduction in force, 56 staff members voluntarily separated from the State Bar. The State Bar plans to fill 37 of the 56 positions, including 22 positions in the Chief Trial Counsel. As a result, the net

reduction will be 19 positions. Further, the State Bar indicated that it created an action plan in June 2016 that includes an emphasis on communication and collaboration. The State Bar believes this action plan will help it foster an atmosphere of mutual trust and open communication.

Table A
Results of Employee Survey at the State Bar

SURVEY QUESTION		AVERAGE SCORE
		4 = Strongly agree 3 = Agree 2 = Disagree 1 = Strongly disagree
SECTION I—CONTROL ENVIRONMENT		
1	The director's office of the State Bar places sufficient emphasis on the importance of integrity, ethical conduct, fairness and honesty in dealings with employees, clients, and other organizations.	2.9
2	My direct supervisor(s) place sufficient emphasis on the importance of integrity, ethical conduct, fairness, and honesty in their dealings with employees, clients, and other organizations.	3.3
3	The director's office of the State Bar strives to comply with laws, rules, and regulations.	3.1
4	My direct supervisor(s) strive to comply with laws, rules, and regulations.	3.4
5	An atmosphere of mutual trust and open communication between management and employees has been established in my work unit.	2.8
6	An atmosphere of mutual trust and open communication between management and employees has been established at the State Bar as a whole.	2.4
7	The acts and actions of management are consistent with the stated values and conduct expected of all other employees.	2.7
8	My work unit is committed to making decisions free of favoritism or bias.	3.0
9	My supervisors are open to suggestions for improvement.	3.1
10	State Bar management is open to suggestions for improvement.	2.7
11	Personnel turnover has not impacted my work unit's ability to effectively complete its tasks.	2.5
12	Employees in my work unit are treated fairly and justly.	2.9
SECTION II—RISK MANAGEMENT		
13	I am accountable for defined, measurable tasks and objectives.	3.3
14	My supervisors hold staff accountable for defined, measurable tasks and objectives.	3.2
15	State Bar management holds staff accountable for defined, measurable tasks and objectives.	3.0
16	I am always clear about to whom I report and who oversees my work.	3.3
17	I have sufficient resources, tools, and time to perform my job.	2.8
18	The objectives and goals of my work unit are reasonable and attainable.	2.9
19	My supervisors have given me an appropriate level of authority to accomplish my job.	3.2
20	State Bar management has given me an appropriate level of authority to accomplish my job.	3.0
21	Generally, I do not feel unreasonable pressure from any State Bar supervisors or management to make decisions that contradict the stated mission of the organization.	3.2
22	In my work unit, we identify barriers and obstacles and resolve issues that could impact achievement of objectives.	3.0
23	My supervisors have created safe mechanisms for employees to raise concerns about practices that may put the State Bar's reputation at risk.	3.0
24	State Bar management has created safe mechanisms for employees to raise concerns about practices that may put the State Bar's reputation at risk.	2.7

SURVEY QUESTION	AVERAGE SCORE
SECTION III—CONTROL ACTIVITIES	
25 The policies and procedures in my work unit are clearly stated and allow me to do my job effectively.	3.0
26 My work is adequately supervised.	3.2
SECTION IV—INFORMATION AND COMMUNICATION	
27 There is a way for me to provide recommendations for process improvements.	3.0
28 The interaction between State Bar management and my work unit enables us to perform our jobs effectively.	2.8
29 The communication across organizational boundaries within the State Bar enables us to perform our jobs effectively.	2.8
30 I have sufficient information to do my job.	3.2
31 My direct supervisor has clearly communicated to me the behavior that is expected of me.	3.3
32 State Bar management is informed and is aware of my work unit's actual performance.	3.0
33 I know how to report employee misconduct.	3.1
34 If I report wrongdoing to my supervisor, I am confident the wrongdoing will stop.	2.8
35 Employees who report suspected misconduct are protected from retaliation.	2.8
SECTION V—MONITORING	
36 Information reported to management reflects the actual results of operations in my work unit.	3.1
37 Internal and/or external feedback and complaints are followed up in a timely and effective manner.	3.0
38 Employees in my work unit know what actions to take when they find mistakes or gaps in what we are supposed to do.	3.1
39 My supervisor reviews my performance with me at appropriate intervals.	3.2
40 I receive written performance evaluations at least every calendar year.	3.4
41 I know what action to take if I become aware of unethical, illegal, or fraudulent activity.	3.1

Source: California State Auditor's survey of the State Bar's employees, conducted April 2017.

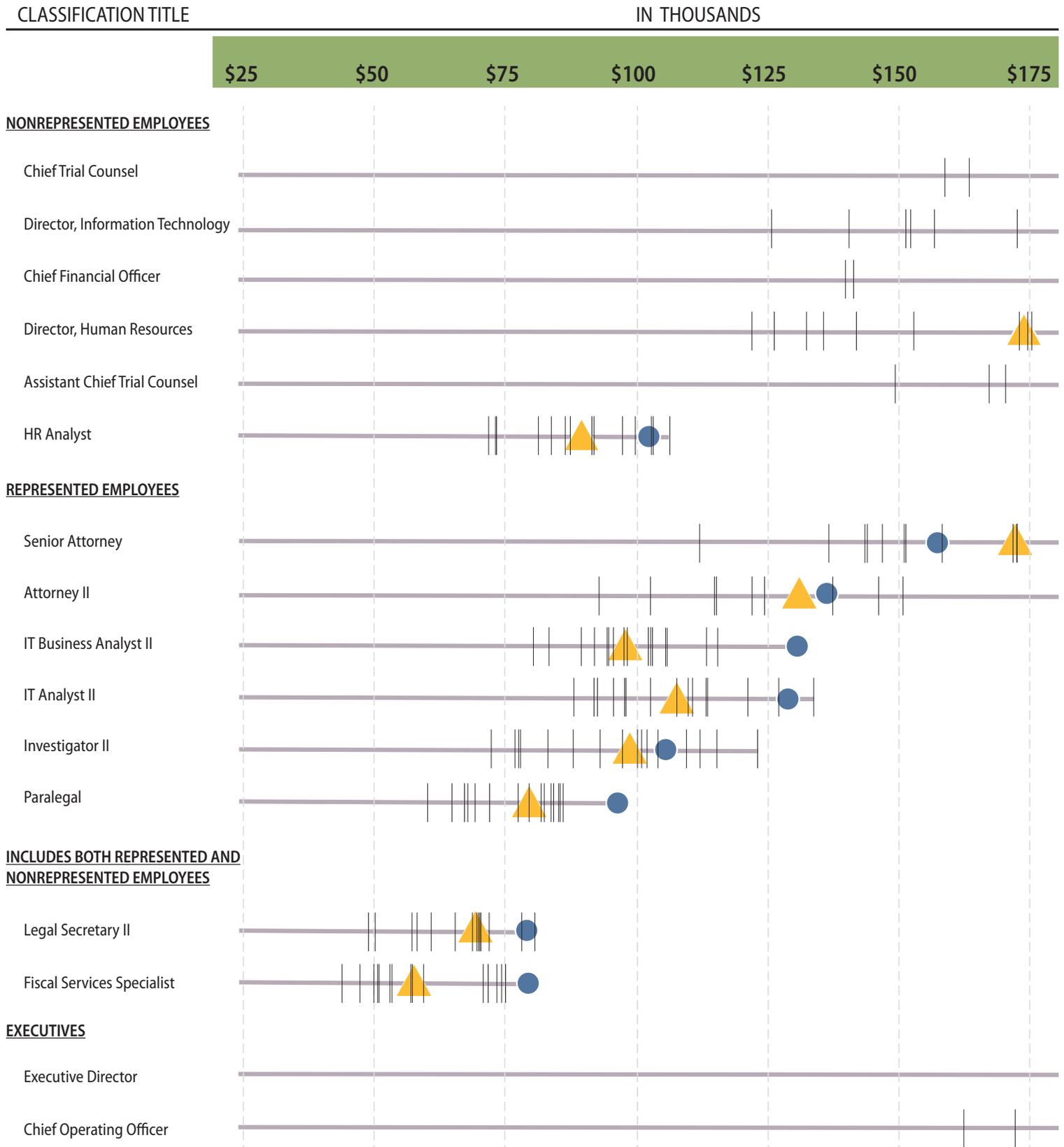
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Appendix B

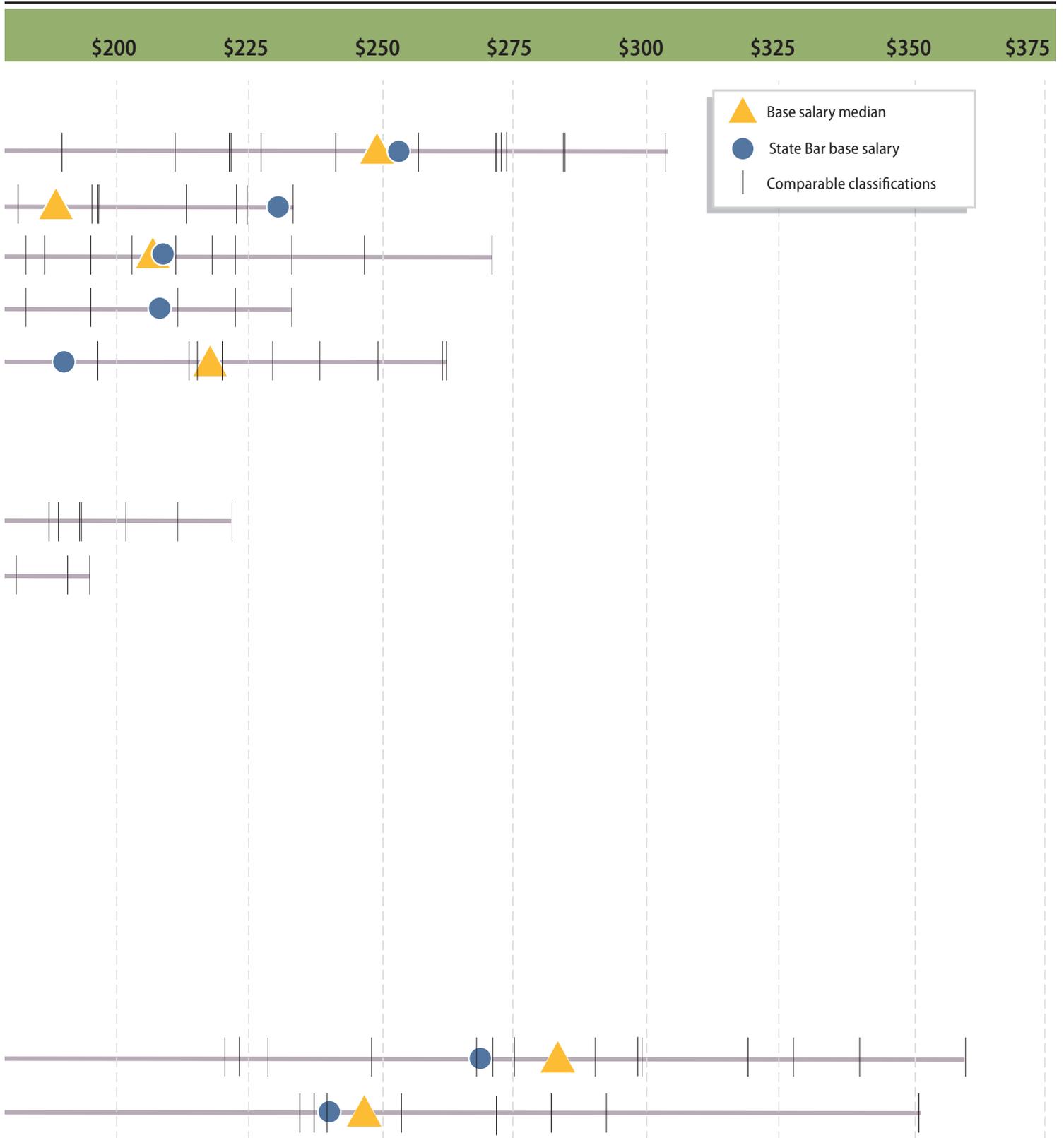
RESULTS OF THE CPS HR CONSULTING TOTAL COMPENSATION STUDY OF THE STATE BAR JOB CLASSIFICATIONS

In response to the 2016 state law requiring it to conduct a compensation and benefit study of those classifications required to conduct disciplinary activities, the State Bar retained CPS HR Consulting (consultant) to conduct an agencywide total compensation study. As part of its April 2017 study, the consultant surveyed 14 current State Bar job classifications and determined that the State Bar pays base salaries that are on average 10 percent above the labor market median. Because the consultant found that the State Bar had established a 36.25-hour workweek for many job classifications, the consultant converted the monthly salaries to a 40-hour workweek equivalent. It then compared the salaries of these 14 positions against those of 16 similar agencies, including local government and the State's Judicial and Executive branches. For example, the consultant reviewed the State Bar's paralegal classification against comparable positions of nine cities and counties, two county superior courts, the Los Angeles Unified School District, and the Executive Branch. It then converted all salary information to an annual base salary basis. The consultant concluded that the State Bar pays base salaries that are above the market median for five of the six represented classifications and five of the six nonrepresented classifications. Further, the other two classifications, the legal secretary II and fiscal services specialist, which include both represented and nonrepresented employees, are also paid base salaries above the market median. Figure B on the following page presents the maximum annual base salary for the 14 current State Bar job classifications the consultant surveyed, along with the salaries of comparable positions it identified. In addition, Figure B shows the results of the consultant's salary survey for the executive director and the chief operating officer. The consultant concluded that these salaries were within the market median.

Figure B
Comparison of the Salaries for the State Bar with Comparable Positions in Similar Agencies



Source: The CPS HR Consulting study of State Bar employees' total compensation, April 2017.



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June 2017



THE STATE BAR OF CALIFORNIA

OFFICE OF EXECUTIVE DIRECTOR

Elizabeth Parker, Executive Director/CEO

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June 15, 2017
Via Encrypted Secured Email

The Honorable Elaine M. Howle*
State Auditor
Bureau of State Audits
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: State Bar of California Response to State Audit Report 2017-030

Dear Ms. Howle:

Please find below the response of the State Bar of California to the Audit 2017-030. Before turning to our specific observations, we wish first to thank your audit team for its courtesy and professionalism. The State Bar is committed to transforming itself into a well-managed and transparent organization that effectively carries out its public protection mission.

Next we wish to thank you for the report and its recommendations, the majority of which we intend to promptly implement. This audit report, like others in the last two years, is of great help to new State Bar leadership as it works to implement comprehensive reform throughout the agency. The 2017 report and its recommendations will be a welcome addition to this on-going work.

Specifically the 2017 Report makes helpful suggestions on ways to further enhance efforts underway to implement classification and compensation analyses, reduce spending on outside counsel, codify earlier management identified alcohol and catering spending, develop additional controls of purchasing cards, and create additional attorney discipline system funding and metrics.

The report's suggestions for how the State Bar might better codify or advance the serious work underway in each of these areas is thus an important contribution to our on-going reform efforts. As a result, we believe that the final report provides both a useful overview of the Bar's progress in the areas studied, as well as thoughtful recommendations for improvement from which we can benefit, going forward.

The findings document the important and continuing progress of reform which new State Bar leadership has made in slightly less than two years. As this process of reform continues, we fully expect that additional issues requiring correction will come to light. We assure you that we are committed to identifying and addressing such issues as part of our on-going internal review of all State Bar functions.

* California State Auditor's comments begin on page 53.

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Our specific responses to report recommendations are provided below. In some areas, additional contextual information is provided to clarify facts which may not have been clearly set forth in the report. The State Bar's past failings are well known, but we believe it is also important to clarify the process for identifying problems and the State Bar's actions in response.

The State Bar itself is acting to bring about needed reform; audit reports are helpful but they cannot substitute for such agency leadership. To be successful, the public and our stakeholders need to be able to rely on the State Bar's commitment to excellence, accountability and transparency in achieving its public protection mission. Critical to this goal is the State Bar's own commitment to identifying problems and correcting them in collaboration with you and our oversight authorities. Our factual clarifications are intended to make clear this approach.

①

RESPONSE TO SPECIFIC AUDIT FINDINGS

To better align its compensation practices with those of comparable agencies, the State Bar should update and formalize its salaries and benefit policies by doing the following:

1. Continue negotiations with the union to transition represented employees to an eight-hour workday and a 40-hour workweek, and to implement new salary and job classifications.

The State Bar appreciates the fact that the report recognizes the Bar's significant progress in attempting to align employee work hours and compensation with comparable agencies and agrees with the recommendation accordingly.

2. Implement an eight-hour work day and 40-hour workweek, as well as new salary and job classifications for its non-represented employees by July 2017.

The State Bar appreciates the fact that the report recognizes the agency's significant progress in attempting to align employee work hours and compensation with comparable agencies and agrees with the recommendation accordingly.

3. Require a contribution rate to health care costs for non-represented employees that is equal to the contribution rate of represented employees by January 2018.

The State Bar appreciates the fact that the report recognizes the agency's significant progress in addressing disparities between represented and non-represented staff with respect to health care contributions, and agrees with the recommendation accordingly.

It should be noted that the recommendation reflects the State Bar's intention. However, contribution rates for represented employees are currently the subject of collective bargaining. If agreement is not reached in time for the 2017 Open Enrollment period, non-represented employee contributions, effective January 1, 2018, will be set at the current contribution level for represented employees. If, subsequent to the Open

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Enrollment period, an agreement is reached with the union reflecting a different contribution structure, the State Bar would not likely be able to modify required contribution levels further until January 1, 2019.

4. For executive employees, require by January 2018 contributions to post-retirement health care costs at a rate equivalent to their contributions during employment at the State Bar.

The State Bar appreciates the fact that the report recognizes the State Bar's significant progress in addressing its post-retirement health plan, and agrees that, executive employees, hired on or after January 1, 2018, will be required to contribute to post-retirement health care costs at a rate equivalent to their contributions during employment at the State Bar. Imposing this change on current management staff can be expected to persuade many key managers to retire early, destabilizing the Bar at a time of significant reform of its internal management. Moreover, the expected retirements of these managers over the next few years will accomplish the objective of this recommendation over a somewhat longer timeframe without disrupting the Bar's services.

5. Develop and adopt a formal policy by December 2017 to regularly compare staff compensation and benefits with comparable agencies.

The State Bar agrees.

To ensure that purchasing cards are assigned only to appropriate staff, to ensure that State Bar's records of employees' credit limits reflect those established with the bank, and to verify that staff use purchasing cards only for allowable and necessary expenses, the State Bar should do the following immediately:

The State Bar appreciates the fact that the report outlines a number of steps taken by the Bar to enhance internal controls and oversight of the purchasing card program. A brief overview of the State Bar's pcard program is provided as context for our response:

- *The State Bar's bank provides a secure online system to manage all banking functions, including checks, wire transfers and credit cards. Purchasing cards are managed via the credit card module of this secure online system.*
- *Approving managers have access to the accounts of cardholders they approve, and can review purchasing activity at any time.*
- *Only key employees within General Services have program administrator rights to the credit card module, with one serving as primary administrator for day to day management. Only these key employees can order a new card; cancel or suspend a card; change a credit limit; change an approver; make any other change to a cardholder profile; and see all cardholder activity.*

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- *New cardholders are enrolled in the system only upon receipt of an enrollment form, signed by the prospective cardholder's department head, which includes either a credit limit based on our standardized limits, or a custom limit based on operational need as documented on the enrollment form.*
- ③
- *Subsequent changes to credit limits are submitted via email to General Services. Credit limit changes require approval from cardholder's department head. The bank enforces credit limits and that is the ultimate internal control.*
 - *In addition to credit limits, Merchant Category Code restrictions are also in place, which restrict purchases for certain categories of services or certain specific vendors. For example, most foreign airlines are completely restricted; Air Conditioning, Heating and Plumbing Contractors are restricted to "Building"-related cardholders.*
 - *The bank provides robust fraud monitoring. Suspicious activity is reported immediately and simultaneously to cardholders and program administrators; accounts are frozen if any fraudulent activity is confirmed.*
- ④
- *At the end of each billing cycle cardholders review their transactions online; provide descriptions and account coding information for each; and forward packets of hard copy receipts to their approver.*
- ④
- *Approvers review the hard copy receipts and the online statements, and approve the online statements.*
 - *Receipt packets are sent to General Services. Statements and receipts are audited per established procedures.*
- ④
- In our view the technical safeguards and multiple levels of review and approval noted above provide a significant level of internal control and oversight of the purchasing card program.*
6. Develop a policy that requires the justification of the business needs for employees to receive purchasing cards and use this policy to limit the number of staff issued a purchasing card.
- ⑤
- The established parameters for purchasing card use have historically provided a sufficient guideline for department heads to determine which of their employees have an operational need for a purchasing card.*

To ensure greater oversight, the State Bar will accept the report recommendation and adopt such a policy by January 2018.

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Page 5

7. Restrict the use of purchasing cards to its original purpose, which was for lower dollar and frequently occurring purchases. For purchases above \$5,000, the State Bar should require the vendor to bill for payment.

The report highlights purchasing card spending in 2016. We reviewed all 9,284 purchasing transactions in the 12 billing cycles of that year. 85% of purchase transactions were under \$500; 14% were between \$500 and \$4,999; less than 1% – 87 transactions out of 9,284 – were \$5,000 or more.

Of those 87 transactions, 34 were recurring monthly charges for offsite records storage, online legal research and a group parking contract; 21 were for other miscellaneous goods and services, mostly related to facilities and I.T.; 32 were for hotels and related services, primarily for the Annual Meeting and other Sections-related events.

The State Bar agrees that it would be reasonable to limit purchasing card purchases of \$5,000 or more to a more restricted set of expense categories, likely related to facilities and other support operations. These restrictions will be codified in policy by January 1, 2018.

8. To demonstrate its commitment to the board's prohibition of all State Bar spending on alcohol, the State Bar should immediately update its procurement manual to reflect this prohibition.

The State Bar appreciates the fact that the report recognizes the agency's significant progress in eliminating alcohol expenditures and agrees with the recommendation accordingly.

9. To ensure that its costs are reasonable and appropriate, the State Bar should update its meal and catering policy to reflect the meal policy of the State's executive branch and require individuals attending committee meetings for the State Bar to comply with standard meal per diem rates.

The State Bar appreciates the fact that the report recognizes the agency's significant progress in reducing on-site catering costs through the imposition of caps in 2017. The State Bar agrees to further advance work in this area through the adoption of Executive Branch per diem limits for onsite catering expenditures.

⑥

10. To ensure that the cost for sections events are reasonable and prudent, the State Bar should require that the sections follow the State Bar's meal per diem and lodging rates, and require the sections to limit expenses for events to only those activities that reasonable and necessary. For off-site events, the State Bar should require sections to follow the State Bar's existing policy of providing written justification of a significant business need to hold the event off-site and obtain approval from the executive director or chief operating officer.

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⑦ *Sections' activities are entirely self-funded from voluntary membership fees and the Sections are likely imminently separating from the State Bar. Imposing additional restrictions on Sections' spending would create both an administrative burden and a distraction from the important work being done to transition the Sections to a standalone entity. In the Bar management's judgment, the Bar's limited staff resources are better spent helping the Sections successfully depart the Bar for a private, non-profit than in further refining oversight of expenditures which will soon come to an end.*

11. To ensure that its lobbying expenses are reasonable and are only for allowable activities, the State Bar should amend its lobbying contracts to require that the lobbyists provide sufficiently detailed invoices that support the amounts they bill for their services.

⑧ *The State Bar has not finalized currently pending lobbying contracts. Audit recommendations will be considered as part of the contract finalization process.*

To contract only for appropriate and necessary services from outside law firms at a prudent rate, the State Bar should put the following informal practices into a written policy:

12. An assessment of the need for outside counsel, including whether the State Bar's attorneys can provide the specified legal services.

The State Bar appreciates the fact that the report recognizes the agency's significant progress in reducing the use of, and costs associated with, outside counsel, and agrees with the recommendation accordingly.

13. An evaluation of the State Bar's past experience with the law firms being considered.

The State Bar appreciates the fact that the report recognizes the agency's significant progress in reducing the use of, and costs associated with, outside counsel, and agrees with the recommendation accordingly.

14. The process State Bar uses to select the outside law firm, including documentation of proposals from other prospective law firms and the costs it considers reasonable for the legal services.

The State Bar appreciates the fact that the report recognizes the agency's significant progress in reducing the use of, and costs associated with, outside counsel, and agrees with the recommendation accordingly.

15. To reduce its reliance on outside legal counsel, the State Bar should continue its efforts to hire staff to fill its remaining vacant attorney positions.

The State Bar appreciates the fact that the report recognizes the agency's significant progress in reducing the use of, and costs associated with, outside counsel, and agrees with the recommendation accordingly.

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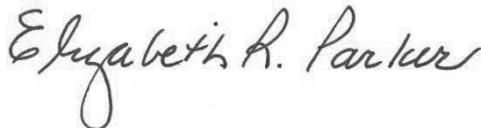
16. To increase transparency, State Bar should disclose annually to the board a list of all contracts with outside law firms – including a description of the services provided, the need for such contracts, and the value and length of the contracts.

The State Bar appreciates the fact that the report recognizes the agency's significant progress in reducing the use of, and costs associated with, outside counsel, and agrees with the recommendation accordingly.

17. To better measure how well its attorney discipline program is meeting the State Bar's core mission to protect the public from attorney misconduct, the State Bar should by December 2017 identify key goals and metrics for the attorney discipline system.

The State Bar must comply with complex statutory mandates for the Annual Discipline Report and has existing metrics to aid Supreme Court, legislative, and management oversight of the discipline function. State Bar management staff have been working with its Office of Research and Institutional Accountability and the Board to simplify and update these metrics. We appreciate the Auditor's validation of this on-going effort, and agrees with the recommendation accordingly. ⑨

Respectfully,



Elizabeth Parker
Executive Director

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE STATE BAR

To provide clarity and perspective, we are commenting on the State Bar's response to our audit. The numbers below correspond to the numbers we have placed in the margin of the State Bar's response.

We conducted this audit according to generally accepted government auditing standards. In following those standards, we obtained sufficient and appropriate audit evidence to support our conclusions and recommendations. Therefore, our report is based on facts.

①

We clarified our recommendation on page 33 based on the State Bar's response to indicate that the State Bar should require executive employees hired on or after January 1, 2018, to contribute to post-retirement health care costs at a rate equivalent to their contributions during employment at the State Bar.

②

We disagree with the State Bar's contention that the bank is the "ultimate internal control" over purchasing cards. On the contrary, because the State Bar enforces credit limits and changes to these limits require approval from the card holder's department head, the State Bar is the control over purchasing cards. As we indicate on page 22, the State Bar acknowledged it does not keep the emails from senior directors who request changes to card holders' credit limits with the bank. Therefore, we could not determine whether a senior director had approved the changes or whether the changes were reasonable for the 19 card holders we reviewed.

③

The State Bar overstates the level of control and oversight it provides for the purchasing card program. As we discuss on page 23, the State Bar reviews receipts for purchasing card transactions only *after* paying the expense, which increases the risk of inappropriate expenses. In contrast, the State Bar's payment process for contracts is to review and approve invoices *before* paying those invoices, which allows the State Bar the opportunity to decide whether to incur the charge and make a payment. Further, as we state on page 20, because 38 percent of State Bar employees are issued purchasing cards with limits ranging from \$5,000 to \$75,000, we stand by our recommendation on page 33 that it should develop a policy requiring justification of the business needs for employees to receive purchasing cards.

④

- ⑤ It is unclear how the State Bar asserts having established parameters that have historically provided a sufficient guideline for department heads to determine which of their employees have an operational need for a purchasing card. As we indicate on page 21, the State Bar does not require documentation of the business need or justification for why an employee qualifies for a purchasing card. Therefore, we stand by our recommendation that the State Bar should develop a policy requiring justification of the business needs for employees to receive purchasing cards.
- ⑥ Although the State Bar agrees with our recommendation, its response does not fully address our concerns. The intent of our recommendation is to address all catering costs, not just those incurred on-site. As we indicate on page 25, the State Bar should limit the costs of catering at off-site events to the State's meal per diem rates. Further, our recommendation on page 33 states that the State Bar should update its meal and catering policy to reflect that of the State's Executive Branch.
- ⑦ As we indicate on page 27, regardless of whether the sections separate from the State Bar, we believe it is reasonable for sections to implement controls to ensure a prudent use of funds. Based on the questionable expenses we observed in this audit, a more prudent use of funds would allow sections to host events for as many of its members as possible.
- ⑧ Based on the State Bar's response that it has not finalized currently pending lobbying contracts, we modified our recommendation on page 34 to indicate that the State Bar should require that lobbyists provide sufficiently detailed invoices that support the amounts they bill for their services.
- ⑨ We look forward to learning more about the State Bar's implementation of this recommendation and receiving supporting documentation in its 60 day response to this report.